

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1957
First Extraordinary Session, 1957
Regular Session, 1958
First Extraordinary Session, 1956

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FOREWORD

This volume contains the Acts of the 1957 Regular Session, the First Extraordinary Session of 1957, the Regular Session of 1958 and the First Extraordinary Session of 1956. It also includes resolutions of general interest adopted by the Legislature and the two Houses thereof during the four sessions.

Regular Session, 1957

The regular 60-day session convened on January 9 and adjourned sine die March 11, 1957. There was a total of 832 bills introduced—479 House Bills and 353 Senate Bills. The Legislature passed 105 House Bills and 94 Senate Bills.

Of the 199 enactments of the session, the Governor approved 189, vetoed seven and permitted two to become law without his approval. The Budget Bill does not require executive action. The Acts vetoed were: S. B. 159 (Creating a Civil Service System), S. B. 316 (Limitation on Collection of Taxes), H. B. 110 (Motor Vehicle License Plates for Amateur Radio Operators), H. B. 291 (Program of Advertising, etc., by Director of Conservation), H. B. 292 (Repealing Statute Creating West Virginia Industrial and Publicity Commission), H. B. 293 (Creating West Virginia Business Development Authority), and H. B. 411 (Creating a Legislative Council). The two that became law without approval were H. B. 418 (Abolishing the Board of Control and Creating the Office of Commissioner of Public Institutions) and H. B. 419 (Abolishing the Liquor Control Commission and Creating the Office of Liquor Control Commissioner).

During the Session there were 34 House Concurrent, 16 House Joint and 24 House Resolutions offered, of which 10 House Concurrent, no House Joint and all the House Resolutions were adopted. The Senate had 23 Senate Concurrent, 10 Senate Joint and 15 Senate Resolutions, of which 17 Senate Concurrent, four Senate Joint and all of the Senate Resolutions were adopted.

Four Constitutional amendments were submitted to the voters. The amendments and the resolutions proposing them are as follows: State Superintendent of Free Schools Amend-

ment (SJR 1), Amendment to Exempt Bank Deposits and Money from Taxation (SJR 4), Corporation Stock Voting Amendment (SJR 5) and Better Schools Amendment (SJR 8).

Seventy-six House Bills, passed by the House, failed of passage by the Senate; and 23 Senate Bills, passed by the Senate, failed of passage by the House.

First Extraordinary Session, 1957

This session was called by the Governor for the purpose of considering and acting upon "all matters relating to the sale and issuance of the Korean Veterans' Bonus Bonds," etc.

The session started on August 5, 1957, and after passing a bill authorizing the sale of the bonus bonds at a higher rate of interest than previously authorized, recessed until January 7, 1958. Reassembling on January 7, 1958, the Legislature adjourned sine die without enacting further legislation.

During the session there were four bills introduced—two House Bills and two Senate Bills. The Legislature passed one bill, H. B. No. 2, which was approved by the Governor.

There were one House Concurrent Resolution and nine House Resolutions, all of which were adopted. The Senate had four Senate Concurrent and Seven Senate Resolutions, of which three Concurrent and all Senate Resolutions were adopted.

Regular Session, 1958

The second regular 30-day session of the Legislature, under the Constitutional Amendment approved by the voters in 1954, convened January 8 and adjourned sine die February 6, 1958.

During the session there was a total of 87 bills introduced—46 House Bills and 41 Senate Bills. The Legislature passed seven House Bills and 13 Senate Bills.

Of the 20 enactments of the session the Governor approved 17 and permitted two (S. B. No. 2 and H. B. No. 36) to become law without his approval. The Budget Bill does not require executive action.

There were 22 House Concurrent, one House Joint and 19 House Resolutions offered, of which 7 House Concurrent, no House Joint and 15 House Resolutions were adopted. The Senate had 10 Senate Concurrent, no Senate Joint and 9 Senate Resolutions, of which 5 Senate Concurrent and 9 Senate Resolutions were adopted.

Eight House Bills, passed by the House, failed of passage by the Senate; and one Senate Bill, passed by the Senate, failed of passage by the House.

First Extraordinary Session, 1956

This session was called by the Governor for the purpose of considering and acting upon (1) "an emergency appropriation to the Board of Governors of West Virginia University for the purpose of securing necessary equipment and supplies with which to conduct the engineering program at the University;" and (2) "zoning legislation to avoid interference caused by emanations of electrical equipment functioning in the area surrounding the proposed site for the installation and operation of a radio astronomy facility in the vicinity of Green Bank, Pocahontas County, West Virginia."

The session convened on August 9, 1956, and concluded its business on that date.

During the session there were only four bills introduced—two Senate and two House Bills. Two bills were passed—H. B. No. 1 (Appropriation for the School of Engineering) and H. B. No. 2 (Radio Astronomy Zoning Act)—and approved by the Governor.

There were one House Concurrent and seven House Resolutions, and the House Concurrent and all House Resolutions were adopted. The Senate had two Concurrent and five Senate Resolutions, of which all were adopted.

This volume may be purchased from the Division of Printing, Department of Finance and Administration, State Capitol, Charleston 5, West Virginia.

C. A. BLANKENSHIP, *Clerk*
House of Delegates

ERRATA

On page 273, section five, line 12, the word “insured” should be “insurer.”

On page 998, the first line of the last section, appearing on this page should read as follows:

“Sec. 79. *Provisions of Article Severable.* — The various”

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First Extraordinary Session, 1956

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LEGISLATURE OF WEST VIRGINIA
MEMBERS, OFFICERS AND STANDING COMMITTEES

FIFTY-THIRD LEGISLATURE

SENATE

OFFICERS

President—RALPH J. BEAN, Moorefield
President Pro Tempore—WARD WYLIE, Mullens
Clerk—J. HOWARD MYERS, Martinsburg
Sergeant-at-Arms—GEORGE D. WILLIAMS, Alum Creek
Doorkeeper—JOHN E. HOWELL, Charleston

District	Name	Address
First	*Frank L. Campbell (D) Herbert Traubert (D)	Wheeling Follansbee
Second	Theodore M. Bowers (R) *John E. Carrigan (R)	New Martinsville Moundsville
Third	¹ Joseph M. Handlan (R) Harry E. Moats (R)	Parkersburg Harrisville
Fourth	² Vernon McCoy (R) R. L. McCulty (R)	Ravenswood. RFD Spencer
Fifth	³ Bernard Sammons (R) *Lyle A. Smith (D)	Huntington Huntington
Sixth	William Mitchell (D) *Glenn Taylor (D)	Welch Matewan
Seventh	Glenn Jackson (D) *Lloyd G. Jackson (D)	Logan Hamlin
Eighth	Wilson Anderson (R) *A. Carl Carey (D)	Charleston Charleston
Ninth	*Jack A. Nuckols (D) Ward Wylie (D)	Beekley Mullens
Tenth	O. H. Ballard (D) *O. Roy Parker (D)	Princeton Union
Eleventh	Howard W. Carson (D) *W. N. Jasper, Jr. (D)	Fayetteville Lewisburg
Twelfth	*John B. Chenoweth (D) Hans McCourt (D)	Elkins Webster Springs
Thirteenth	*Walter A. Holden (D) Raymond J. Vassar (R)	Salem Weston
Fourteenth	O. G. Hedrick (D) *Don K. Marchand (D)	Fairmont Morgantown
Fifteenth	A. L. Reed (R) *Dayton R. Stemple (R)	Newburg Phillippi
Sixteenth	Ralph J. Bean (D) *Clarence E. Martin, Jr. (D)	Moorefield Martinsburg
	(D) Democrats	21
	(R) Republicans	11
	Total	32

*Senators elected in 1954.

¹Appointed April 27, 1957, to fill vacancy caused by resignation of Andy Swearingen.

²Appointed January 31, 1957, to fill vacancy caused by resignation of Brad Sayre.

³Appointed December 31, 1957, to fill vacancy caused by resignation of Hatfield Brubeck.

HOUSE OF DELEGATES

OFFICERS

Speaker—W. E. FLANNERY, Man

Clerk—C. A. BLANKENSHIP, Pineville

Sergeant-at-Arms—J. O. TUTWILER, Beckley

Doorkeeper—JAKE NEAL, Tioga

County	Name	Address
Barbour	G. Frank Row (R)	Junior
Berkeley	Luke E. Terry (R)	Martinsburg
Boone	E. E. White (D)	Madison
Braxton	Rodney B. Belknap (D)	Gassaway
Brooke	Harold W. Virden (D)	Follansbee
Cabell	David M. Baker (R)	Huntington
	J. Shelby Christian (R)	Huntington
	Okey E. Hodge (R)	Huntington
	T. E. Holderby (R)	Huntington
	Mrs. E. Wyatt Payne (R)	Huntington
Calhoun	James E. Morford (D)	Grantsville
Clay	J. C. Cruikshank (D)	Ivydale
Doddridge	Loutellus M. Stout (R)	New Milton
Fayette	H. Hugh Bosely (D)	Montgomery
	Hobart Booth, Jr. (D)	Oak Hill
	P. H. Kelly (D)	Montgomery
	T. E. Myles (D)	Fayetteville
Gilmer	Paul H. Kidd (D)	Glenville
Grant	Larkin B. Ours (R)	Dorcas
Greenbrier	Richard H. Bowman (D)	Rainelle
	John A. Lile (D)	Lewisburg
Hampshire	John R. Blue (D)	Romney
Hancock	William Tompos (D)	Weirton
Hardy	H. G. Muntzing (R)	Moorefield
Harrison	Wade H. Garrett (D)	Clarksburg
	C. Donald Robertson (D)	Clarksburg
	H. Laban White, Jr. (D)	Clarksburg
	Rene V. Zabeau (D)	Clarksburg
Jackson	Hoyt H. Taylor (R)	Kenna
Jefferson	William P. C. Perry (D)	Charles Town
Kanawha	*Leonard H. Barnett (R)	London
	Harry S. Barr, Jr. (R)	Charleston
	W. T. Brotherton, Jr. (D)	Charleston
	Homer W. Caldwell (R)	Charleston
	Walter W. Carey (R)	Charleston
	John N. Charnock, Jr. (R)	Charleston
	W. E. Chilton (D)	Charleston
	J. Hornor Davis, II (D)	Charleston
	Stanley E. Deutsch (R)	Charleston
	Robert Q. Jones (R)	Charleston
Eddie King (R)	Charleston	
Lewis	Louis G. Craig (D)	Weston
Lincoln	Ralph W. Smith (D)	West Hamlin
Logan	Daniel D. Dahill (D)	Logan
	W. E. Flannery (D)	Logan
	Edward Franklin Foxx (D)	Lundale
	Earl B. Hager (D)	Logan

*Appointed August 3, 1957, to fill vacancy caused by resignation of Elizabeth V. Hallanan.

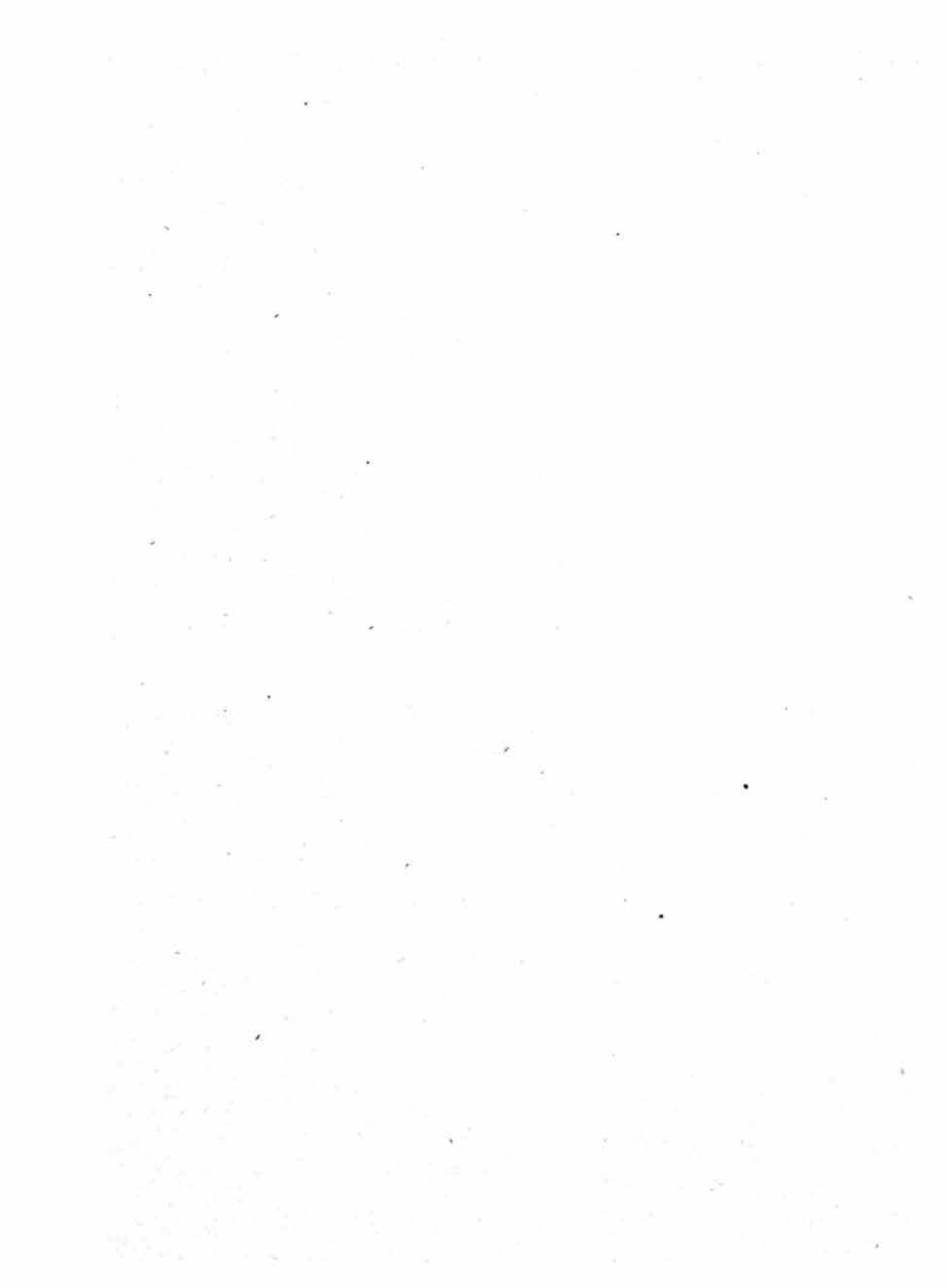
HOUSE OF DELEGATES

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County	Name	Address
Marion	Nicola Fantasia (D)	Kingmont
	William J. Parker (D)	Fairmont
	W. R. Wilson (D)	Fairmont
Marshall	James L. Arnold (R)	Moundsville
	Thomas E. Welch (R)	Moundsville
Mason	Campbell W. Stevens (R)	Apple Grove
McDowell	Vernon Q. Callaway (D)	Welch
	Mrs. Elizabeth Drewry (D)	Northfork
	Glen D. Hatcher (D)	War
	W. L. Mills (D)	Kimball
Mercer	Harry R. Pauley (D)	Iaeger
	Clarence C. Christian, Jr. (D)	Princeton
	Andrew L. Clark (D)	Princeton
Mineral	Robert M. Richardson (D)	Bluefield
	Joseph W. Kessel (R)	Keyser
Mingo	Toney E. Cline (D)	Baisden
	Noah E. Floyd (D)	Williamson
Monongalia	John E. Crynock (R)	Morgantown
	William A. Moreland (D)	Morgantown
	Julius W. Singleton, Jr. (D)	Morgantown
Monroe	Edward T. White (R)	Union
Morgan	C. Clifton Dyche, Jr. (R)	Berkeley Springs
Nicholas	D. R. Frazer (D)	Richwood
Ohio	Charles F. Bachmann (R)	Wheeling
	Chester R. Hubbard (R)	Wheeling
	George H. Seibert, Jr. (R)	Wheeling
Pendleton	William McCoy, Jr. (D)	Franklin
Pleasants	J. C. Powell (R)	St. Marys
Pocahontas	Arnold O. Welford (R)	Marlinton
Preston	Richard Whetsell (R)	Kingwood
Putnam	Judson D. McCormick (R)	Red House
Raleigh	Roy Lee Harmon (D)	Beckley
	Ned H. Ragland (D)	Beckley
	Everett R. Shafer (D)	Beckley
	Paul J. Vennari (D)	Beckley
Randolph	Earl H. Stalnaker (D)	Elkins
Ritchie	J. F. Deem (R)	Harrisville
Roane	Mark K. Hersman (R)	Spencer
Summers	*Paul J. Carr, Jr. (D)	Hinton
Taylor	Lloyd E. Sayres (R)	Grafton
Tucker	Joseph R. Gilmore (D)	Parsons
Tyler	Sprigg Smith (R)	Sistersville
Upshur	Richard L. Young (R)	Buckhannon
Wayne	Wayne M. Plymale (D)	Huntington
	Y. Jefferson Rife (D)	Kenova
Webster	Orvan Hammon (D)	Webster Springs
Wetzel	Herbert Schupbach (D)	New Martinsville
Wirt	Raymond F. Morgan (R)	Elizabeth
Wood	Spencer K. Creel (R)	Parkersburg
	Wm. P. A. Nicely (R)	Parkersburg
	George H. Whaley (R)	Parkersburg
Wyoming	Paul Bower (D)	Mullens
	J. Paul England (D)	Pineville

(D) Democrats	58
(R) Republicans	42
Total	100

*Appointed April 26, 1957, to fill vacancy caused by the death of his father, Paul J. Carr, Sr., on March 24, 1957.



LEGISLATURE OF WEST VIRGINIA

ACTS OF 1957

REGULAR SESSION

CHAPTER 1

(Com. Sub. for House Bill No. 48—Originating in the House
Committee on the Judiciary)

AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seven-a, relating to actions against parent or parents for malicious or wilful destruction of property by a minor under the age of eighteen years.

[Passed February 22, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 7-a. Liability of Parents.

Section

1. Findings and declarations of legislative intent.
2. Parent liability for damages for wilful or malicious destruction of property by a minor.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article seven-a, to read as follows:

- Section 1. *Findings and Declaration of Legislative Intent.*—It is hereby determined and declared as a matter
- 2

3 of legislative finding that in the state of West Virginia
4 there are now, and have been, acts of widespread vandal-
5 ism wilfully and maliciously perpetrated by children un-
6 der the age of eighteen years, the great majority of whom
7 live with a parent or parents; that this vandalism has
8 caused untold loss and damage of property of public
9 agencies, corporations and individuals for which adequate
10 compensation for said victims cannot be realized because
11 of the lack of estate or resources of such children so that
12 judgments against them for their tortious acts would go
13 unsatisfied; that the primary responsibility for the proper
14 training, discipline and upbringing of said children rests
15 with their parent or parents; that there has been a marked
16 and shocking failure on the part of many parents to effect
17 the proper and necessary training, discipline and upbringing
18 of their children; that as a result of this parental negli-
19 gence, much of said vandalism by said children has oc-
20 curred, and that because of this failure of parental re-
21 sponsibility, parents of children perpetrating such acts
22 should be liable for the damages to property caused there-
23 by. Therefore, it is the intent of the Legislature so to
24 recognize said responsibility of parents for their children's
25 conduct and to impose on said parent or parents for such
26 acts of their children, who live with them and who com-
27 mit acts of vandalism wilfully and maliciously, liability
28 in accordance with the provisions hereinafter set forth.

Sec. 2. *Parent Liability for Damages for Wilful or*
2 *Malicious Destruction of Property by a Minor.*—The state
3 of West Virginia, any municipal corporation, county,
4 school board, or other political subdivision of the state,
5 or any person or organization of any kind or character,
6 shall be entitled to recover damages in an amount not
7 to exceed three hundred dollars in any justice of the
8 peace or other court of competent jurisdiction from the
9 parent or parents of any minor under the age of eighteen
10 years, living with the parent or parents, who shall ma-
11 liciously or wilfully destroy property, real, personal or
12 mixed, belonging to the state, any municipal corporation,
13 county, school board, or other political subdivisions of
14 the state, or any person or organization of any kind or

15 character. The recovery hereunder shall be limited to
16 the actual damages in addition to taxable court costs.
17 The form of action hereunder shall be an action for a
18 wrong in justice of the peace court and in trespass on
19 the case in other courts of competent jurisdiction: *Pro-*
20 *vided, however,* That the right of action and remedy
21 therefor granted herein shall be in addition to and not
22 exclusive of any rights of action and remedies therefor
23 against a parent or parents for the tortious acts of his
24 or their children heretofore existing under the provisions
25 of any law, statutory or otherwise, or now so existing
26 independently of the provisions of this statute.

CHAPTER 2

(Senate Bill No. 301—By Mr. Martin)

AN ACT to amend and reenact section twenty-eight, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the time when the right to enforce liens or claims against decedent's property becomes barred.

[Passed March 5, 1937: in effect ninety days from passage. Approved by the Governor.]

Article 2. Proof and Allowance of Claims Against Estates of Decedents.

Section

28. When enforcement of lien to secure claim barred.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 28. *When Enforcement of Lien to Secure Claim*
2 *Barred.*—When the right to bring action or suit against

3 distributees and legatees on any claim against the de-
 4 cedent shall become barred, the right to enforce such
 5 claim against real estate shall also become barred to the
 6 extent that such claim could have been collected out of
 7 the personal assets of decedent. The provisions of this
 8 section shall not apply to liens upon real property ac-
 9 quired or created in the lifetime of decedent, made or
 10 created to secure claims due and payable in future in-
 11 stallments or at a future date.

CHAPTER 3

(House Bill No. 337—By Mr. Terry)

AN ACT to amend and reenact section thirty, article nine, chap-
 ter nineteen of the code of West Virginia, one thousand nine
 hundred thirty-one, as amended, relating to appraisal of
 diseased animals.

[Passed February 26, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 9. Diseases Among Domestic Animals.

Section

30. Appraisal of diseased animals; amount; arbitration; fees of arbit-
 rators.

Be it enacted by the Legislature of West Virginia:

That section thirty, article nine, chapter nineteen of the
 code of West Virginia, one thousand nine hundred thirty-one,
 as amended, be amended and reenacted to read as follows:

Section 30. *Appraisal of Diseased Animals; Amount;*
 2 *Arbitration; Fees of Arbitrators.*—The commissioner or
 3 his agent shall act as appraiser and appraise each diseased
 4 animal within five days prior to the date of slaughter,
 5 basing the amount upon the class and market value of
 6 the animal at the time of the appraisal, whether for breed-
 7 ing purposes or for milk or meat production. Animals
 8 reacting to any approved test, but not exhibiting any

9 physical evidence of disease, shall be appraised without
10 considering the presence of a diseased condition, but
11 animals exhibiting any physical evidence of disease shall
12 be appraised as diseased animals: *Provided, however,*
13 That where indemnities are claimed for animals slaugh-
14 tered on account of being infected with rabies, appraise-
15 ment shall be based on the value of the animal before it
16 became infected. The amount of appraisal for a non-
17 registered equine animal shall not exceed seventy-five
18 dollars, for a registered equine animal one hundred dol-
19 lars, for a nonregistered bovine animal one hundred and
20 fifty dollars, for a registered bovine animal two hundred
21 and fifty dollars, for a nonregistered swine twenty-five
22 dollars, for a registered swine forty dollars, for a non-
23 registered sheep ten dollars, and for a registered sheep
24 twenty-five dollars. If the amount of appraisal of any
25 animal, as determined by the appraiser is not satisfactory
26 to the owner of the animal, a written notice of such fact
27 setting forth the reason for complaint shall be made at
28 once to the appraiser. The amount of the appraisal shall
29 then be determined by arbitrators, one to be appointed
30 by the appraiser and one by the owner of the animal. If
31 these arbitrators are not able to agree as to the amount
32 of appraisal, a third arbitrator shall be appointed by them,
33 whose decision shall be final. Each arbitrator shall be
34 paid one dollar for each appraisement of five or less than
35 five animals, and two dollars if more than five animals
36 are appraised. Compensation for the arbitrators appointed
37 by the owner and the appraiser shall be paid by the party
38 appointing such arbitrator, and in case a third arbitrator
39 is chosen, such arbitrator shall be paid by the party
40 against whom the decision is made.

CHAPTER 4

(Senate Bill No. 18—By Mr. Stemple and Mr. Taylor)

AN ACT to amend chapter nineteen of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended,

by amending and reenacting sections two, three and eight, article twenty-one-a thereof, by adding two new sections, designated sections thirteen-a and thirteen-b, to said article, and by adding to said chapter a new article, designated article twenty-one-b, all relating to the conservation of natural resources by providing for the conservation of soil and soil resources, the control and prevention of soil erosion, the prevention of floodwater and sediment damage, and the conservation, development, utilization, and disposal of water.

[Passed March 1, 1957; in effect ninety days from passage. Approved by the Governor.]

Article

21-a. Soil Conservation Districts.

21-b. Watershed Improvement Districts.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting sections two, three and eight, article twenty-one-a thereof, by adding two new sections, designated sections thirteen-a and thirteen-b, to said article, and by adding to said chapter a new article, designated article twenty-one-b, all to read as follows:

Article 21-a. Soil Conservation Districts.

Section

2. Legislative determinations and declaration of policy.
3. Definitions.
8. Powers of districts and supervisors.
- 13-a. Authority of governmental divisions to expend money; levy.
- 13-b. Assurance of cooperation by governmental division.

Section 2. *Legislative Determinations and Declaration of Policy.*—It is hereby declared, as a matter of legislative determination:

- 4 (a) That the farm and grazing lands of the state
- 5 of West Virginia are among the basic assets of the state

6 and that the preservation of these lands is necessary to
7 protect and promote the health, safety, and general wel-
8 fare of its people; that improper land-use practices have
9 caused and have contributed to, and are now causing and
10 contributing to, a progressively more serious erosion of
11 the farm and grazing lands of this state by water; that
12 the breaking of natural grass, plant, and forest cover has
13 interfered with the natural factors of soil stabilization,
14 causing loosening of soil and exhaustion of humus, and
15 developing a soil condition that favors erosion; that the
16 topsoil is being washed out of fields and pastures; that
17 there has been an accelerated washing of sloping fields;
18 that these processes of erosion by water speed up with re-
19 moval of absorptive topsoil, causing exposure of less ab-
20 sorptive and less protective but more erosive subsoil; that
21 failure by any landowner to conserve the soil and control
22 erosion upon his lands causes a washing of soil and water
23 from his lands onto other lands and makes the conserva-
24 tion of soil and control of erosion of such other lands dif-
25 ficult or impossible.

26 (b) That the consequences of such soil erosion in the
27 form of soil-washing are the silting and sedimentation of
28 stream channels, reservoirs, dams, ditches, and harbors;
29 the piling up of soil on lower slopes, and its deposit over
30 alluvial plains; the reduction in productivity or outright
31 ruin of rich bottom lands by overwash of poor subsoil ma-
32 terial, sand, and gravel swept out of the hills; deteriora-
33 tion of soil and its fertility, deterioration of crops grown
34 thereon, and declining acre yields despite development of
35 scientific processes for increasing such yields; loss of soil
36 and water which causes destruction of food and cover for
37 wildlife; the washing of soil into streams which silts over
38 spawning beds and destroys water plants, diminishing the
39 food supply of fish; a diminishing of the underground wa-
40 ter reserve, which causes water shortages, intensifies peri-
41 ods of drought, and causes crop failures; an increase in
42 speed and volume of rainfall run-off, causing severe and
43 increasing floods, which bring suffering, disease, and
44 death; impoverishment of families attempting to farm
45 eroding and eroded lands; damage to roads, highways,
46 railways, farm buildings, and other property from floods;

47 and losses in navigation, hydro-electric power, municipal
48 water supply, irrigation developments, farming and graz-
49 ing.

50 (c) That to conserve soil resources and control and
51 prevent soil erosion and prevent floodwater and sediment
52 damage, and further the conservation, development, util-
53 ization, and disposal of water, it is necessary that land-use
54 practices contributing to soil wastage and soil erosion be
55 discouraged and discontinued, and appropriate soil-con-
56 serving land-use practices and works of improvement for
57 flood prevention or the conservation, development, utili-
58 zation, and disposal of water be adopted and carried out;
59 that among the procedures necessary for widespread adop-
60 tion, are the carrying on of engineering operations such
61 as the construction of terraces, terrace outlets, dams, de-
62 silting basins, floodwater retarding structures, channel
63 improvements, floodways, dikes, ponds, ditches, and the
64 like; the utilization of strip cropping, lister furrowing,
65 contour cultivating, and contour furrowing; land drainage;
66 land irrigation; seeding and planting of waste, sloping,
67 abandoned, or eroded lands to water-conserving and
68 erosion-preventing plants, trees, and grasses; forestation
69 and reforestation; rotation of crops; soil stabilization with
70 trees, grasses, legumes, and other thick-growing, soil-
71 holding crops; retardation of run-off by increasing ab-
72 sorption of rainfall; and retirement from cultivation of
73 steep, highly erosive areas and areas now badly gullied
74 or otherwise eroded.

75 (d) It is hereby declared to be the policy of the Leg-
76 islature to provide for the conservation of the soil and
77 soil resources of this state, for the control and prevention
78 of soil erosion, for the prevention of floodwater and sedi-
79 ment damage, and for furthering the conservation, devel-
80 opment, utilization, and disposal of water, and thereby to
81 preserve natural resources, control floods, prevent im-
82 pairment of dams and reservoirs, assist in maintaining the
83 navigability of rivers and harbors, preserve wildlife, pro-
84 tect the tax base, protect public lands and protect and
85 promote the health, safety, and general welfare of the
86 people of this state.

87 (e) This article contemplates that the incidental cost
88 of organizing soil conservation districts will be borne by
89 the state, while the expense of operating the districts so or-
90 ganized, will be provided by donations, gifts, contribu-
91 tions, grants and appropriations, in money, services, ma-
92 terials or otherwise, from the United States or any of its
93 agencies, from the state of West Virginia, or from other
94 sources, with the understanding that the owners or occu-
95 piers will contribute funds, labor, materials and equip-
96 ment to aid the carrying out of erosion control measures
97 on their lands.

Sec. 3. *Definitions.*—Wherever used or referred to in
2 this article, unless a different meaning clearly appears
3 from the context:

4 (1) "District" or "soil conservation district" means a
5 subdivision of this state, organized in accordance with
6 the provisions of this article, for the purposes, with the
7 powers, and subject to the restrictions hereinafter set
8 forth.

9 (2) "Supervisor" means one of the members of the
10 governing body of a district, elected or appointed in ac-
11 cordance with the provisions of this article.

12 (3) "Committee" or "state soil conservation commit-
13 tee" means the agency created in section four of this
14 article.

15 (4) "Petition" means a petition filed under the pro-
16 visions of subsection (a) of section five of this article for
17 the creation of a district.

18 (5) "State" means the state of West Virginia.

19 (6) "Agency of this state" includes the government of
20 this state and any subdivision, agency, or instrumentality,
21 corporate or otherwise, of the government of this
22 state.

23 (7) "United States" or "agencies of the United States"
24 includes the United States of America, the soil conserva-
25 tion service of the United States department of agricul-
26 ture, and any other agency or instrumentality, corporate
27 or otherwise, of the United States of America.

28 (8) "Landowners" or "owners of land" includes any
29 person or persons, firm, or corporation who shall hold
30 title to three or more acres of any lands lying within a
31 district organized under the provisions of this article.

32 (9) "Land occupier" or "occupier of land" includes any
33 person, firm, or corporation who shall hold title to, or
34 shall be in possession of, any lands lying within a district
35 organized under the provisions of this article, whether as
36 owner, lessee, renter, or tenant.

37 (10) "Due notice" means notice published at least
38 twice, with an interval of at least seven days between the
39 two publication dates, in two newspapers of opposite pol-
40 itics and of general circulation published in the county
41 in which is located the appropriate area, or if no such
42 publication of general circulation be available, by posting
43 at a reasonable number of conspicuous places within the
44 appropriate area, such posting to include, where possible,
45 posting at public places where it may be customary to
46 post notices concerning county or municipal affairs gen-
47 erally. At any hearing held pursuant to such notice at
48 the time and place designated in such notice, adjourn-
49 ment may be made from time to time without the neces-
50 sity of renewing such notice for such adjournment dates.

51 (11) The terms "soil conservation," "erosion control,"
52 or "erosion prevention projects," when used throughout
53 the article, shall denote those projects that have been
54 established by federal agencies in cooperation with state
55 agencies for the purpose of demonstrating soil erosion
56 control and water conservation practices.

57 (12) The term "governing body" means the supervi-
58 sors of any soil conservation district, town or city council,
59 city commission, county court, or body acting in lieu of a
60 county court, in this state, and the term "governmental
61 division" means any soil conservation district, town, city,
62 or county in this state.

63 (13) "Works of improvement" means such structures
64 as may be necessary or convenient for flood prevention or
65 the conservation, development, utilization or disposal of
66 water.

Sec. 8. *Powers of Districts and Supervisors.*—A soil

2 conservation district organized under the provisions of
3 this article shall have the following powers, and the su-
4 pervisor thereof shall have the following powers, in addi-
5 tion to others granted in other sections of this article:

6 (1) To conduct surveys, investigations, and research
7 relating to the character of soil erosion and floodwater
8 and sediment damage, and to the conservation, develop-
9 ment, utilization, and disposal of water, and the preven-
10 tive and control measures needed, to publish the results
11 of such surveys, investigations, or research, and to dis-
12 seminate information concerning such preventive and
13 control measures and works of improvement: *Provided,*
14 *however,* That in order to avoid duplication of research
15 activities, no district shall initiate any research program
16 or publish the results except with the approval of the
17 state committee and in cooperation with the government
18 of this state or any of its agencies, or with the United
19 States or any of its agencies;

20 (2) To conduct demonstrational projects within the dis-
21 trict on lands owned or controlled by this state or any of
22 its agencies, with the consent and cooperation of the agen-
23 cy administering and having jurisdiction thereof, and on
24 any other lands within the district upon obtaining the con-
25 sent of the owner and occupier of such lands or the neces-
26 sary rights or interests in such lands, in order to demon-
27 strate by example the means, methods and measures by
28 which soil and soil resources may be conserved, and soil
29 erosion in the form of soil washing may be prevented and
30 controlled, and works of improvement may be carried out;

31 (3) To carry out preventive and control measures and
32 works of improvement within the district including, but
33 not limited to, engineering operations, methods of cultiva-
34 tion, the growing of vegetation, changes in use of land, and
35 the measures listed in subsection (c) of section two of this
36 article, on lands owned or controlled by this state or any
37 of its agencies, with the consent and cooperation of the
38 agency administering and having jurisdiction thereof, and
39 on any other lands within the district upon obtaining the
40 consent of the owner and occupier of such lands or the
41 necessary rights or interests in such lands;

42 (4) To cooperate, or enter into agreements with, and
43 within the limits of appropriations duly made available
44 to it by law, to furnish financial or other aid to any
45 agency, governmental or otherwise, or any occupier of
46 lands within the district, in the carrying on of erosion-
47 control and prevention operations and works of improve-
48 ment within the district, subject to such conditions as
49 the supervisors may deem necessary to advance the pur-
50 poses of this article;

51 (5) To obtain options upon and to acquire, by purchase,
52 exchange, lease, gift, grant, bequest, devise, or otherwise,
53 any property, real or personal, or rights or interests there-
54 in; to institute condemnation proceedings to acquire any
55 property, real or personal, or rights or interests therein,
56 whether or not located in the district, required for works
57 of improvement; to maintain, administer, and improve
58 any properties acquired, to receive income from such
59 properties and to expend such income in carrying out the
60 purposes and provisions of this article; and to sell, lease,
61 or otherwise dispose of any of its property or interests
62 therein in furtherance of the purposes and the provisions
63 of this article;

64 (6) To make available, on such terms as it shall pre-
65 scribe, to land occupiers within the district, agricultural
66 and engineering machinery and equipment, fertilizer,
67 seeds and seedlings, and such other material or equipment,
68 as will assist such land occupiers to carry on operations
69 upon their lands for the conservation of soil resources and
70 for the prevention and control of soil erosion and for flood
71 prevention or the conservation, development, utilization,
72 and disposal of water;

73 (7) To construct, improve, operate and maintain such
74 structures as may be necessary or convenient for the per-
75 formance of any of the operations authorized in this
76 article;

77 (8) To develop with the approval of the state com-
78 mittee comprehensive plans for the conservation of soil
79 resources and for the control and prevention of soil ero-
80 sion and for flood prevention or the conservation, develop-
81 ment, utilization, and disposal of water within the district,

82 which plans shall specify, in such detail as may be pos-
83 sible, the acts, procedures, performances, and avoidances
84 which are necessary or desirable for the effectuation of
85 such plans, including the specification of engineering
86 operations, methods of cultivation, the growing of vegeta-
87 tion, cropping programs, tillage practices, and changes in
88 use of land; and to publish such plans and information and
89 bring them to the attention of occupiers of lands within
90 the district;

91 (9) To take over, by purchase, lease, or otherwise, and
92 to administer any soil-conservation, flood-prevention,
93 drainage, irrigation, water-management, erosion-control,
94 or erosion-prevention project, or combinations thereof,
95 located within its boundaries, undertaken by the United
96 States or any of its agencies, or by this state or any of
97 its agencies; to manage, as agent of the United States or
98 any of its agencies, or of this state or any of its agencies,
99 any soil conservation, flood-prevention, drainage, irriga-
100 tion, water-management, erosion-control, or erosion-pre-
101 vention project, or combinations thereof, within its boun-
102 daries; to act as agent for the United States or any of its
103 agencies, or for this state or any of its agencies, in con-
104 nection with the acquisition, construction, operation, or
105 administration of any soil-conservation, flood-prevention,
106 drainage, irrigation, water-management, erosion-control,
107 or erosion-prevention project, or combinations thereof,
108 within its boundaries; to accept donations, gifts, contribu-
109 tions and grants in money, services, materials, or other-
110 wise, from the United States or any of its agencies, or
111 from this state or any of its agencies, or from any other
112 source, and to use or expend such money, services, mate-
113 rials, or other contributions in carrying on its operations;

114 (10) To sue and be sued in the name of the district;
115 to have a seal, which seal shall be judicially noticed; to
116 have perpetual succession unless terminated as herein-
117 after provided; to make and execute contracts and other
118 instruments, necessary or convenient to the exercise of
119 its powers; to make, and from time to time amend and
120 repeal, rules and regulations not inconsistent with this
121 article, to carry into effect its purposes and powers;

122 (11) As a condition to this extending of any benefits
123 under this article to, or the performance of work upon, any
124 lands, the supervisors may require contributions in money,
125 services, materials, or otherwise, to any operations con-
126 ferring such benefits, and may require land occupiers to
127 enter into and perform such agreements or covenants as
128 to the permanent use of such lands as will tend to prevent
129 or control erosion and prevent floodwater and sediment
130 damage thereon;

131 (12) No provisions with respect to the acquisition,
132 operation, or disposition of property by other public bodies
133 shall be applicable to a district organized hereunder in its
134 acquisition, operation and disposition of property unless
135 the legislature shall specifically so state;

136 (13) To enter into contracts and other arrangements
137 with agencies of the United States, with persons, firms or
138 corporations, including public corporations, with the state
139 government of this state or other states, or any depart-
140 ment or agency thereof, with governmental divisions, with
141 soil conservation, drainage, flood control, soil erosion or
142 other improvement districts in this state or other states,
143 for cooperation or assistance in constructing, improving,
144 operating or maintaining works of improvement within
145 the district, or in preventing floods, or in conserving, de-
146 veloping, utilizing and disposing of water in the district,
147 or for making surveys, investigations or reports thereof;
148 and to obtain options upon and acquire property, real or
149 personal or rights or interests therein, in other districts or
150 states required for flood prevention or the conservation,
151 development, utilization and disposal of water within the
152 district and to construct, improve, operate or maintain
153 thereon or therewith works of improvement.

Sec. 13-a. *Authority of Governmental Divisions to Ex-*
2 *pend Money; Levy.*—The governing body of any govern-
3 mental division which may reasonably be expected to
4 receive a benefit from the construction, improvement,
5 operation or maintenance of any works of improvement
6 may expend money for such construction, improvement,
7 operation or maintenance if this expectation exists as to
8 any part of the governmental division and even though

9 such works of improvement are not located within the
10 corporate limits of the governmental division or are not
11 within this state: *Provided, however,* That if the expendi-
12 ture is not made directly by the governmental division for
13 such purpose, it shall be made only through a soil con-
14 servation district or watershed improvement district or-
15 ganized under the laws of this state, but it shall not be nec-
16 essary that any part of the governmental division be within
17 the limits of the district through which the expenditure is
18 made. Such governing bodies or governmental divisions
19 may set up in their respective budgets funds to be spent
20 for such purposes, and municipalities and counties may
21 levy and collect taxes for such purposes, in the manner
22 provided by law: *Provided, however,* That in case suffi-
23 cient funds cannot be raised by ordinary levies, additional
24 funds may be raised by municipalities and counties as pro-
25 vided by section sixteen, article eight, chapter eleven of
26 this code.

Sec. 13-b. *Assurance of Cooperation by Governmental*
2 *Division.*—By vote of the governing body, any govern-
3 mental division authorized to expend money on works of
4 improvement by section thirteen-a of this article may
5 alone, or in combination with any other governmental
6 division or divisions, so authorized to expend money on
7 works of improvement, give assurances, by contract or
8 otherwise, satisfactory to agencies of the United States,
9 congressional committees, or other proper federal author-
10 ity, and to soil conservation districts or watershed im-
11 provement districts organized under the laws of this state,
12 that the governmental division or divisions will construct,
13 improve, operate or maintain works of improvement or
14 will appropriate a sum or sums of money and expend it
15 for such purposes as provided in section thirteen-a of this
16 article.

17 The assurances, whether by contract or otherwise, shall
18 be reduced to writing and before final approval of the
19 governing bodies involved shall be submitted to the at-
20 torney general for approval. After approval by the at-
21 torney general and by the governing body or bodies con-
22 cerned, certified copies of the assurances shall be filed in

23 the office of the county clerk of the county or counties in
 24 which the governmental division is located and in the
 25 office of the state tax commissioner.

26 Any assurance hereunder may be valid and binding for
 27 a period of time not to exceed fifty years.

Article 21-b. Watershed Improvement Districts.

Section

1. Definitions.
2. Establishment of watershed improvement districts authorized.
3. Petition for establishment.
4. Public hearing on petition; determination of need for district; defining boundaries.
5. Determination of whether operation of proposed district is feasible.
6. Declaration of organization of district; certification.
7. Establishment of watershed improvement district situated in more than one soil conservation district.
8. Inclusion of additional territory.
9. Governing body of district; trustees.
10. Officers, agents and employees; surety bonds; annual audit.
11. Status and general powers of district; approval of governing body required.
12. Powers granted additional to powers of soil conservation district; soil conservation district to continue to exercise its powers.
13. Discontinuance of watershed improvement districts.

Section 1. *Definitions.*—The term “landowners” or “owners of land” as used in this article includes any person, firm or corporation, other than a public body corporate, who shall hold title to any lot or tract of land lying within a district organized or to be organized under the provisions of this article, whether or not such land lies within the corporate limits of any town or city.

Sec. 2. *Establishment of Watershed Improvement Districts Authorized.*—Whenever within a soil conservation district or districts, soil conservation or the conservation, development, utilization, or disposal of water will be promoted by the construction of improvements for such purpose or purposes, a watershed improvement district may be established within such soil conservation district or districts in accordance with the provisions of this article.

Sec. 3. *Petition for Establishment.*—Any twenty-five owners of land lying within the limits of a proposed watershed improvement district, or a majority of such owners if their number be less than fifty, or any municipality or county any part of which lies within the proposed water-

6 shed improvement district, may file a petition with the
7 supervisors of the soil conservation district or districts in
8 which the proposed watershed improvement district will
9 be situated asking that a watershed improvement district
10 be organized for the territory described in the petition.
11 The petition shall set forth:

12 (1) The proposed name of the watershed improvement
13 district;

14 (2) That there is need, in the interest of the public
15 health, safety, or welfare, for a watershed improvement
16 district for the territory described in the petition;

17 (3) A description of the territory proposed to be organiz-
18 ed as a watershed improvement district, which descrip-
19 tion shall be deemed sufficient if generally accurate;

20 (4) That the territory described in the petition is con-
21 tiguous and is in the same watershed;

22 (5) A request that the territory described in the petition
23 be organized as a watershed improvement district.

24 Land lying within the limits of one watershed improve-
25 ment district shall not be included in another watershed
26 improvement district.

2 *Sec. 4. Public Hearing on Petition; Determination of*
3 *Need for District; Defining Boundaries.*—Within thirty
4 days after such petition has been filed with the supervi-
5 sors of the soil conservation district or districts, they shall
6 hold a public hearing or hearings upon the practicability
7 and feasibility of creating the proposed watershed im-
8 provement district. All owners of land within the proposed
9 watershed improvement district and all other interested
10 parties shall have the right to attend such a hearing and
11 be heard. The supervisors may prescribe such rules and
12 regulations governing the conduct of such hearings as they
13 deem to be necessary.

14 The supervisors shall thereafter determine whether
15 there is need, in the interest of the public health, safety,
16 or welfare, for the organization of the proposed watershed
17 improvement district. They shall record such determina-
18 tion and shall define the boundaries of such watershed
improvement district.

2 *Sec. 5. Determination of Whether Operation of Pro-*
3 *posed District Is Feasible.*—If the supervisors determine
4 that need for the proposed watershed improvement dis-
5 trict exists and after they define the boundaries of the
6 proposed district, they shall consider the question of
7 whether the operation of the proposed watershed im-
8 provement district is administratively practicable and
9 feasible.

2 *Sec. 6. Declaration of Organization of District; Certifica-*
3 *tion.*—If the supervisors shall determine that operation of
4 the proposed watershed improvement district is adminis-
5 tratively practicable and feasible, they shall so notify the
6 state soil conservation committee which may declare the
7 watershed improvement district to be duly organized
8 and shall record such fact in its official minutes. Following
9 such entry in its official minutes, the committee shall
10 certify the fact of the organization of the watershed im-
11 provement district to the secretary of state, and shall
12 furnish a copy of such certification for recordation to the
13 clerk of the county court in each county in which any por-
14 tion of the watershed improvement district is situated;
15 and the watershed improvement district shall thereupon
16 constitute a governmental division of this state and a pub-
17 lic body corporate.

2 *Sec. 7. Establishment of Watershed Improvement Dis-*
3 *trict Situated in More Than One Soil Conservation Dis-*
4 *trict.*—If a proposed watershed improvement district will
5 be situated in more than one soil conservation district,
6 copies of the petition shall be presented to the supervisors
7 of all the soil conservation districts in which any part of
8 such proposed watershed improvement district will be
9 situated, and the supervisors of all such soil conserva-
10 tion districts affected shall act jointly as a board of super-
11 visors with respect to all matters concerning such water-
12 shed improvement district, including its organization.
13 Such watershed improvement district shall be organized
14 in like manner and shall have the same powers and duties
15 as a watershed improvement district situated entirely in
16 one soil conservation district.

2 Sec. 8. *Inclusion of Additional Territory.*—Petitions for
3 including additional territory within an existing water-
4 shed improvement district may be filed with supervisors
5 of the soil conservation district or districts in which the
6 watershed improvement district is situated, and in such
7 cases the provisions hereof with respect to petitions to
8 organize a watershed improvement district shall be ob-
9 served to the extent deemed practicable by such super-
10 visors. No additional territory shall be included in an
11 existing watershed improvement district without the ap-
12 proval of the state committee and certification of its in-
clusion to the officers indicated in section six of this article.

2 Sec. 9. *Governing Body of District; Trustees.*—The
3 supervisors of the soil conservation district or districts in
4 which the watershed improvement district is situated
5 shall be the governing body of the watershed improvement
6 district. They may appoint three trustees, who shall be
7 owners of land within the watershed improvement dis-
8 trict, to carry on the business of the watershed improve-
9 ment district. The trustees so appointed shall exercise
10 such administrative duties and powers as may be dele-
11 gated to them by the governing body of the district, and
12 they shall hold office at the will of that body. A trustee
13 shall receive no compensation for his services but may
14 be reimbursed from funds of the district for actual and
15 necessary expenses incurred by him in the performance
16 of his duties. The trustees shall designate a chairman and
17 may, from time to time, change such designation. One of
18 the trustees may be selected as treasurer and shall then
19 be responsible for the safekeeping of all the funds of the
watershed improvement district.

20 When a watershed improvement district lies in more
21 than one soil conservation district, the supervisors of all
22 such districts shall act jointly as the governing body of the
23 watershed improvement district.

2 Sec. 10. *Officers, Agents and Employees; Surety Bonds;*
3 *Annual Audit.*—The trustees may, with the approval of the
4 governing body of the district, employ such officers, agents,
and other employees as they may require and shall de-

5 termine their qualifications, duties and compensation.
6 The compensation of such persons shall be paid out of
7 funds of said district. The governing body shall provide
8 for the execution of surety bonds for the treasurer and
9 such other trustees, officers, agents, and employees as
10 shall be entrusted with funds or property of the water-
11 shed improvement district and shall provide for the mak-
12 ing and publication of an annual audit of the accounts of
13 receipts and disbursements of the watershed improve-
14 ment district.

Sec. 11. *Status and General Powers of District; Approv-
2 al of Governing Body Required.*—A watershed improve-
3 ment district organized under the provisions of this article
4 shall constitute a governmental division of this state and
5 a public body corporate, and such watershed improve-
6 ment district shall have all of the powers of the soil con-
7 servation district or districts in which the watershed im-
8 provement district is situated. These powers are set forth
9 in article twenty-one-a, chapter nineteen of the code, and
10 any reference therein to a "soil conservation district" shall
11 be deemed for the purposes of this article to include a
12 "watershed improvement district". The trustees shall exer-
13 cise only such of the powers of the watershed improvement
14 district as the governing body of the district may desig-
15 nate from time to time.

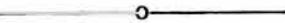
Sec. 12. *Powers Granted Additional to Powers of Soil
2 Conservation District; Soil Conservation District to Con-
3 tinue to Exercise its Powers.*—The powers herein granted
4 to watershed improvement districts shall be additional to
5 the powers of the soil conservation district or districts in
6 which the watershed improvement district is situated;
7 and the soil conservation district or districts, and the
8 supervisors thereof, are authorized, notwithstanding the
9 creation of the watershed improvement district, to con-
10 tinue to exercise all of its powers within the watershed
11 improvement district.

Sec. 13. *Discontinuance of Watershed Improvement
2 Districts.*—At any time after five years from the organiza-
3 tion of a watershed improvement district, any twenty-five

4 owners of land lying within the limits of the district, or a
5 majority of such owners if their number be less than fifty,
6 or any municipality or county any part of which lies with-
7 in the district, may file a petition with the governing
8 body of the district, praying that the existence of the dis-
9 trict be discontinued. The petition shall state the reasons
10 for discontinuance, and that all obligations of the district
11 have been met.

12 The governing body of the district may conduct public
13 hearings on the petition to assist it in making a determina-
14 tion.

15 If it is found that all the obligations of the district have
16 been met, the governing body shall consider the question
17 of whether soil conservation or the conservation develop-
18 ment, utilization, or disposal of water will be promoted
19 by the continuance of the district. If the governing body
20 shall determine that none of these objectives will be pro-
21 moted, it shall so notify the state soil conservation com-
22 mittee which may declare the district to be discontinued
23 and shall record such fact in its official minutes. Following
24 such entry in its official minutes, the committee shall cer-
25 tify the fact of the discontinuance to the secretary of state
26 and shall furnish a copy of such certification for recorda-
27 tion to the clerk of the county court in each county in
28 which any portion of the district is situated; and the dis-
29 trict shall thereupon cease to exist.



CHAPTER 5

(House Bill No. 419—By Mr. Speaker, Mr. Flannery)

AN ACT to amend and reenact sections one, two, three and nine, article two, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, abolishing the West Virginia liquor control commission and creating the office of West Virginia liquor control commissioner in lieu thereof.

[Passed March 9, 1957; in effect July 1, 1957. Became a law without the approval of the Governor.]

Article 2. Liquor Control Commissioner.

Section

1. West Virginia liquor control commissioner; powers.
2. Commissioner; appointment; duties.
3. Term of office; vacancy.
9. Salary and expenses.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three and nine, article two, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *West Virginia Liquor Control Commissioner; Powers.*—To accomplish the purposes of this chapter there is hereby created the office of West Virginia liquor control commissioner. The commissioner shall have and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by the West Virginia liquor control commission which is hereby abolished. Wherever in this chapter or elsewhere in law reference is made to the West Virginia liquor control commission such reference shall henceforth be construed and understood to mean the West Virginia liquor control commissioner. All parts and provisions of this chapter rendered meaningless and inapplicable by the provisions hereof are hereby modified and amended so that the provisions of this chapter will be consistent and harmonious in their entirety.

Sec. 2. *Commissioner; Appointment; Duties.*—The commissioner shall be appointed by the governor, with the advice and consent of the Senate, and shall devote his entire time to the duties of his office.

Sec. 3. *Term of Office; Vacancy.*—The commissioner shall be appointed for a term of four years and any appointment to fill a vacancy shall be for the unexpired term.

Sec. 9. *Salary and Expenses.*—The commissioner shall
2 receive a salary of ten thousand dollars per annum, pay-
3 able monthly, and shall be paid his actual and necessary
4 traveling expenses incurred in performance of his official
5 duties.

CHAPTER 6

(House Bill No. 476—By Mr. Seibert and Mr. Myles)

AN ACT to amend and reenact sections nine and nineteen, article three, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend article three of said chapter by adding two new sections, to be designated sections nine-a and nineteen-a, all providing for an increase in the price of alcoholic liquors sold at state stores for the purpose of paying veterans' bonus bonds and Korean veterans' bonus bonds and for the payments by the liquor commission into the veterans' bonus sinking fund.

[Passed March 8, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 3. Sales by Commission.

Section

9. Uniform prices; posting and distribution of price lists; price increase for payment of veterans' bonus bonds and Korean veterans' bonus bonds.
- 9-a. Price increase for payment of Korean veterans' bonus bonds.
19. Amount of operating fund; payment into veterans' bonus sinking fund.
- 19-a. Payment into veterans' bonus sinking fund for retirement of Korean veterans' bonus bonds.

Be it enacted by the Legislature of West Virginia:

That sections nine and nineteen, article three, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said article three of said chapter be further amended by adding

thereto two new sections, designated sections nine-a and nineteen-a, all to read as follows:

Section 9. *Uniform Prices; Posting and Distribution of Price Lists; Price Increase for Payment of Veterans' Bonus Bonds and Korean Veterans' Bonus Bonds.*—The commission shall, from time to time, fix uniform prices for each variety, class and brand of alcoholic liquors offered for sale in state stores. Alcoholic liquors shall be sold in state stores and agencies only at the uniform prices fixed by the commission.

The commission shall prepare price lists showing the price of each variety, class or brand. Price lists shall be posted prominently in each store and shall be available for distribution and inspection in every state store and agency.

For the purpose of providing revenue for the payment of bonds issued under and by virtue of the veterans' bonus amendment of one thousand nine hundred fifty to the constitution and the Korean veterans' bonus amendment of one thousand nine hundred fifty-six to the constitution, the commission in the exercise of its authority under this section is hereby directed to continue the increase in the price of alcoholic liquors heretofore effected pursuant to the provisions of this section as amended by chapter six, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-one, in an amount sufficient to produce an additional annual revenue of one million six hundred thousand dollars on an annual volume of business equal to the average for the past three years. Whenever in any fiscal year the amount of money accumulated in the veterans' bonus sinking fund is sufficient to pay at maturity all of the outstanding bonus bonds issued under said veterans' bonus amendment of one thousand nine hundred fifty, together with the interest due or payable thereon, and thereafter all of the outstanding bonus bonds issued under said Korean veterans' bonus amendment of one thousand nine hundred fifty-six, together with the interest due or payable thereon, the provision herein made for such price increase shall become ineffective at the end of such fiscal year.

2 Sec. 9-a. *Price Increase for Payment of Korean Vet-*
3 *erans' Bonus Bonds.*—For the purpose of providing reve-
4 nue for the payment of bonds issued under and by virtue
5 of said Korean veterans' bonus amendment of one thou-
6 sand nine hundred fifty-six the commission in the exer-
7 cise of its authority under section nine of this article is
8 hereby directed to increase the price of alcoholic liquors
9 in addition to the price increase provided in said section
10 nine hereof, on or before the last day of June, one thou-
11 sand nine hundred fifty-seven, in an amount sufficient to
12 produce an additional revenue of one million eight hun-
13 dred thousand dollars on an annual volume of business
14 equal to the average for the last three years. Whenever
15 in any fiscal year the amount of money accumulated in
16 the veterans' bonus sinking fund for the retirement of
17 Korean veterans' bonus bonds shall be sufficient to pay
18 at maturity all outstanding bonus bonds issued under said
19 Korean veterans' bonus amendment of one thousand nine
20 hundred fifty-six, together with the interest due or pay-
21 able thereon, the provision herein made for such price
22 increase shall become ineffective at the end of such fiscal
year.

2 Sec. 19. *Amount of Operating Fund; Payment into Vet-*
3 *erans' Bonus Sinking Fund.*—All moneys collected by the
4 commission shall be credited to the operating fund until
5 that fund reaches an amount sufficient for the current and
6 routine requirements of the department, this amount to
7 be not in excess of the amount hereinbefore provided in
section fifteen of this article.

8 On or after the first day of July, one thousand nine
9 hundred fifty-seven, from receipts in excess of the re-
10 quirement of the operating fund, the sum of four hun-
11 dred thousand dollars shall, upon requisition of the gov-
12 ernor, be paid each quarter into the veterans' bonus sink-
13 ing fund. If, in any fiscal year, the amount so paid shall
14 be less than fifteen per cent of such excess, an additional
15 amount sufficient to make the total payments equal to
16 fifteen per cent of such excess shall at the end of the
17 fiscal year be paid into the sinking fund, upon the requi-
18 sition of the governor. All such funds so paid into the

19 veterans' bonus sinking fund shall be applied to the re-
20 tirement of bonds issued under said veterans' bonus
21 amendment of one thousand nine hundred fifty: *Provided,*
22 *however,* That when the amount of money accumulated
23 in the veterans' bonus sinking fund for retirement of
24 veterans' bonus bonds issued under said veterans' bonus
25 amendment of one thousand nine hundred fifty shall be
26 sufficient to pay at maturity all outstanding bonus bonds
27 issued under said amendment, together with the interest
28 due or payable thereon, said funds shall thereupon be
29 applied to the retirement of bonds issued under said
30 Korean veterans' bonus amendment of one thousand nine
31 hundred fifty-six.

32 Whenever in any fiscal year the amount of money
33 accumulated in the veterans' bonus sinking fund shall be
34 sufficient to pay at maturity all outstanding bonus bonds
35 issued under said veterans' bonus amendment of one
36 thousand nine hundred fifty and under said Korean vet-
37 erans' bonus amendment of one thousand nine hundred
38 fifty-six, together with interest due or payable thereon, no
39 further transfers to such sinking fund shall be made after
40 the end of such fiscal year.

Sec. 19-a. *Payment into Veterans' Bonus Sinking Fund*
2 *For Retirement of Korean Veterans' Bonus Bonds.*—On
3 or after the first day of July, one thousand nine hundred
4 fifty-seven, from receipts in excess of the requirements
5 of the operating fund of the commission, the sum of four
6 hundred fifty thousand dollars shall, upon requisition of
7 the governor, be paid each quarter into the veterans'
8 bonus sinking fund to be used for the purpose of retiring
9 bonds issued under said Korean veterans' bonus amend-
10 ment of one thousand nine hundred fifty-six. Whenever,
11 in any fiscal year, the amount of money accumulated in
12 the veterans' bonus sinking fund for the retirement of
13 said Korean veterans' bonus bonds shall be sufficient to
14 pay at maturity all outstanding bonus bonds issued under
15 the Korean veterans' bonus amendment of one thousand
16 nine hundred fifty-six, together with interest due or pay-
17 able thereon, no further transfers to such sinking fund
18 shall be made after the end of such fiscal year.

CHAPTER 7

(Senate Bill No. 295—By Mr. Bean, Mr. President)

AN ACT to amend and reenact section twenty-two, article four, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, providing for the licensing of persons selling alcoholic liquors to the West Virginia liquor control commission and penalties, controls and limitations relating thereto.

[Passed March 4, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 4. Licenses.

Section

22. Licensing of persons selling to commission; persons eligible; fees; penalties and limitations.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article four, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 22. *Licensing of Persons Selling to Commission; Persons Eligible; Fees, Penalties and Limitations.*—
2 No person, firm or corporation shall be or act or serve as
3 an agent, broker or salesman selling or offering to sell or
4 soliciting or negotiating the sale of alcoholic liquor to
5 the commission without first obtaining a license so to
6 do in accordance with the provisions of this section. Only
7 salaried employees of distilleries, manufacturers, pro-
8 ducers or processors of alcoholic liquor may be licensed
9 hereunder, and no person may be licensed hereunder who
10 sells or offers to sell alcoholic liquor to the commission
11 on a fee or commission basis. The commission shall be the
12 licensing authority and may grant to persons of good
13 moral character the license herein provided, and may re-
14 fuse to grant such license to any person heretofore con-

16 victed of a felony within ten years prior to his application
17 for such license; refuse to grant, suspend or revoke
18 licenses. Licenses shall be on an annual basis for the
19 period from the first day of July until the thirtieth day of
20 June next following. New and renewal licenses shall be
21 granted only upon verified application to the commission
22 presented on forms provided by the commission. Any
23 person representing more than one producer, manufactur-
24 er, or distributor of alcoholic liquors shall file a separate
25 application and shall obtain a separate license for each
26 such representation. The annual license fee shall be one
27 hundred dollars. The fee for any license granted for the
28 remainder of any license year between the first day of
29 January and the thirtieth day of June of the same calen-
30 dar year shall be fifty dollars.

31 No person who is the father, mother, son, daughter,
32 brother, sister, uncle, aunt, nephew or niece of a member
33 of the commission or of any elected or appointed state
34 official, or who is the spouse of any such person so re-
35 lated to a member of the commission or to any elected
36 or appointive state official, may be granted a license
37 hereunder. No member of the Legislature or the spouse
38 of any such member may be granted a license hereunder.
39 Nor shall any member or officer of any political party
40 executive committee of this state or the spouse of any
41 such member or officer be granted a license hereunder.

42 In addition to all other information which the com-
43 mission may require to be supplied on the license appli-
44 cation forms, each applicant shall be required to state
45 his name and his residence address and the name and
46 business address of the producer, manufacturer or dis-
47 tributor he represents; the name and address of each
48 additional producer, manufacturer or distributor of alco-
49 holic liquors he represents; the monetary total of all
50 alcoholic liquor sales, if any, made by him to the com-
51 mission during the fiscal year preceding the license year
52 for which he is seeking a license; the monetary total of
53 the gross income received by him on such sales, if any,
54 during such fiscal year; whether he has, during such fiscal
55 year, made or given, voluntarily or on request, any gift,

56 contribution of money or property to any member or em-
57 ployee of the commission or to or for the benefit of any
58 political party committee or campaign fund; and his re-
59 lationship, if any, by blood or marriage, to any member
60 of the commission or to any elected or appointive state
61 official. All such applications shall be verified by oath of
62 the applicant and shall be prepared and filed in duplicate.
63 All such applications and a current list of all licensees
64 hereunder shall be matters of public record and shall be
65 available to public inspection at the commission's offices
66 at the state capitol. Every licensee who ceases to be an
67 agent, broker or salesman, as herein contemplated, shall
68 so advise the commission in writing and such person's
69 name shall be immediately removed from the license list
70 and his license shall be cancelled and terminated.

71 All persons licensed hereunder shall be full-time salar-
72 ied employees of the distilleries, manufacturers, pro-
73 ducers or processors of alcoholic liquor they represent
74 and shall devote their full time to the duties of such em-
75 ployment and shall have and engage in no other remun-
76 erative occupation or calling at the same time. No such
77 licensed person shall share, divide or split his salary with
78 any person, other than his wife, or some legal dependent,
79 nor shall he make any contribution to any political party
80 campaign fund in this state.

81 All licensees hereunder shall be subject to all other
82 provisions of this chapter and to the lawful rules and
83 regulations promulgated by the commission. Licenses
84 may be refused, suspended or revoked by the commission
85 for cause, including any of the applicable grounds of
86 revocation specified in section nineteen of this article.
87 Provisions of this article relating to notice, hearing and
88 appeals shall, to the extent applicable, govern procedures
89 on suspension and revocation of licenses hereunder.

90 -Any person, firm or corporation violating any provision
91 of this section, including knowingly making of any false
92 statement in a verified application for a license, shall be
93 guilty of a misdemeanor offense and shall, upon convic-
94 tion thereof, be fined not exceeding one thousand dollars
95 or imprisoned in jail not exceeding twelve months, or be

96 subject to both such fine and imprisonment in the discre-
97 tion of the court.

CHAPTER 8

(Com. Sub. for Senate Bill No. 1—Originating in the
Senate Committee on Finance)

AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution.

[Passed March 11, 1957; in effect from passage.]

Title

1. General Provisions.
2. Appropriations.
3. Administration.

Title 1. General Provisions.

Section

1. General policy.
2. Definitions.
3. Classification of appropriations.
4. Method of expenditure.

Be it enacted by the Legislature of West Virginia:

Section 1. *General Policy.*—The purpose of this act is to
2 appropriate money necessary for economical and efficient
3 discharge of the duties and responsibilities of the state and
4 its agencies during the fiscal year one thousand nine hun-
5 dred fifty-eight.

Sec. 2. *Definitions.*—For the purpose of this act:

- 2 “Board” shall mean the board of public works;
- 3 “Spending Unit” shall mean the department, agency, or
4 institution to which an appropriation is made;
- 5 The “fiscal year one thousand nine hundred fifty-eight”
6 shall mean the period from July first, one thousand nine

7 hundred fifty-seven, through June thirtieth, one thousand
8 nine hundred fifty-eight.

9 "From collections" shall mean that part of the total ap-
10 propriation which must be collected by the spending unit
11 to be available for expenditure. If the authorized amount
12 of collections is not collected, the total appropriation for
13 the spending unit shall be reduced automatically by the
14 amount of the deficiency in the collection. If the amount
15 collected exceeds the amount designated "from collections"
16 the excess shall be set aside in a special surplus fund and
17 may be expended for the purpose of the spending unit as
18 provided by chapter thirty-nine, acts of the Legislature,
19 regular session, one thousand nine hundred thirty-nine.

Sec. 3. *Classification of Appropriations.*—An appropria-
2 tion for:

3 "Personal services" shall be expended only for the pay-
4 ment of salaries, wages, fees, and other compensation for
5 skill, work, or employment;

6 Unless otherwise specified, appropriations for personal
7 services shall include salaries of heads of spending units.

8 "Current expenses" shall be expended only for operating
9 costs other than personal services or capital outlay;

10 "Repairs and alterations" shall include all expenditures
11 for materials, supplies and labor used in repairing and al-
12 tering buildings, grounds and equipment;

13 "Equipment" shall be expended only for things which
14 have an appreciable and calculable period of usefulness in
15 excess of one year;

16 "Buildings" shall include construction and alteration of
17 structures and the improvements of lands, sewer and
18 water improvements, and shall include shelter, support,
19 storage, protection, or the improvement of a natural con-
20 dition;

21 "Lands" shall be expended only for the purchase of lands
22 or interest in lands.

23 Appropriations otherwise classified shall be expended

24 only where the distribution of expenditures for different
 25 purposes cannot well be determined in advance or it is
 26 necessary or desirable to permit the spending unit freedom
 27 to spend an appropriation for more than one of the above
 28 purposes.

Sec. 4. *Method of Expenditure.*— Money appropriated by
 2 this act, unless otherwise specifically directed, shall be
 3 appropriated and expended according to the provisions of
 4 article three, chapter twelve of the code of West Virginia,
 5 one thousand nine hundred thirty-one, or according to any
 6 law detailing a procedure specifically limiting that article.

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14. Total appropriation.	
15. General school fund.	

Section 1. *Appropriations from General Revenue.*—From
 2 the state fund, general revenue, there is hereby appropriat-
 3 ed conditionally upon the fulfillment of the provisions set
 4 forth in chapter thirty-nine, acts of the Legislature, regular
 5 session, one thousand nine hundred thirty-nine, the follow-
 6 ing amounts, as itemized, for expenditure during the fiscal
 7 year one thousand nine hundred fifty-eight.

LEGISLATIVE

1—Senate

Acct. No. 101	<i>Fiscal Year</i> 1956-57
1 Salaries of Members.....	\$ 6,000.00
2 Compensation and per diem of officers and 3 attaches	5,000.00
4 Mileage of Members.....	2,400.00
5	<i>Fiscal Year</i>
6	1957-58
7 Salaries of Members.....	\$ 50,000.00
8 Compensation and per diem of officers and 9 attaches	30,000.00
10 Mileage of Members.....	1,000.00
11 Current Expenses and Contingent Fund	80,000.00
12 To pay Clerk of the Senate for compiling 13 and publishing the West Virginia Blue 14 Book, the distribution of which shall be 15 made by the Office of the Clerk of the 16 Senate and shall include seventy-five 17 copies for each member of the Legislature 18 and two copies to each classified and ap- 19 proved High and Junior High School and 20 one to each Elementary School within the 21 state	10,000.00
22 To pay the cost of printing the 1957 edition 23 of Blue Book.....	46,000.00
24 To establish bill drafting service and ex- 25 penses connected therewith.....	5,000.00
26 The appropriations for the Senate for the 27 fiscal year 1956-57 are to remain in full	

28 force and effect until the convening of the
29 session of the Legislature for 1958.

30 Upon the written request of the Clerk of the
31 Senate the State Auditor shall transfer
32 amounts between items of the total appro-
33 priation in order to protect or increase the
34 efficiency of the service.

35 The Clerk of the Senate is authorized to
36 draw his requisitions upon the Auditor,
37 payable out of the contingent fund of the
38 Senate, for any bills for supplies and serv-
39 ices that may have been incurred by the
40 Senate and not included in the appropri-
41 ation bill, and for bills for supplies and
42 services incurred after adjournment, and
43 for the necessary operation of the Senate
44 offices, the requisition for same to be ac-
45 companied by the bills to be filed with
46 the Auditor.

2—House of Delegates

Acct. No. 102

Fiscal Year
1956-57

1	Salaries of Members	\$ 6,000.00
2	Compensation and per diem of officers and	
3	attaches	45,000.00
4	Mileage of Members	500.00

Fiscal Year
1957-58

5		
6		
7	Salaries of Members	\$ 160,000.00
8	Compensation and per diem of officers and	
9	attaches	30,000.00
10	Mileage of Members	3,000.00
11	Current Expenses and Contingent Fund.....	60,000.00
12	Drafting Service	5,000.00

13 An amount, not to exceed \$3,600.00 per year,
14 is hereby authorized to be expended from
15 the contingent fund of the House of Dele-
16 gates for janitor services, etc.

17 The appropriations for the House of Dele-
 18 gates for the fiscal year 1956-57 are to re-
 19 main in full force and effect until the con-
 20 vening of the session of the Legislature
 21 for 1958.

22 Upon the written request of the Clerk of the
 23 House of Delegates, the State Auditor shall
 24 transfer amounts between items of the
 25 total appropriation in order to protect or
 26 increase the efficiency of the service.

27 The Clerk of the House of Delegates, with
 28 approval of the Speaker, is authorized to
 29 draw his requisitions upon the Auditor,
 30 payable out of the contingent fund of the
 31 House of Delegates, for any bills for sup-
 32 plies and services that may have been in-
 33 curred by the House of Delegates, and not
 34 included in the appropriation bill, for bills
 35 for services and supplies incurred in prep-
 36 aration for the opening of the session and
 37 after adjournment, and for the necessary
 38 operation of the House of Delegates' offices,
 39 the requisition for same to be accompanied
 40 by bills to be filed with the Auditor.

41 For duties imposed by law and by the House
 42 of Delegates, including the salary allowed
 43 by law as keeper of the rolls, the Clerk of
 44 the House of Delegates shall be paid a
 45 salary of \$750.00 per month, payable from
 46 the contingent fund of the House of Dele-
 47 gates, and the Clerk may employ a secre-
 48 tary at a salary not to exceed \$300.00 per
 49 month, payable monthly from the same
 50 fund.

3—Joint Expenses

Acct. No. 103

Fiscal Year
 1956-57

1	Joint Committee on Government and Fi-	
2	nance	\$ 20,000.00

3	Other Authorized Legislative Committees	20,000.00
4	Legislative Council.....	10,000.00
5		<i>Fiscal Year</i>
6		<i>1957-58</i>
7	To pay the cost of legislative printing and	
8	stationery	\$ 50,000.00
9	Commission on Interstate Cooperation.....	18,000.00
10	Joint Committee on Government and Fi-	
11	nance	300,000.00
12	Other Authorized Legislative Committees ...	60,000.00
13	Legislative Council.....	20,000.00
14	Contingent Fund.....	10,000.00
15	The above contingent fund is made avail-	
16	able for the Joint Committee on Govern-	
17	ment and Finance to meet any unforeseen	
18	obligations of the Legislature arising dur-	
19	ing the appropriation period.	
20	The appropriations for Joint Expenses for	
21	the fiscal year 1956-57 are to remain in full	
22	force and effect until the convening of the	
23	session of the Legislature for 1958.	
24	Upon the written request of the Clerk of the	
25	Senate and the Clerk of the House of Del-	
26	egates, the State Auditor shall transfer	
27	amounts between items of the total appro-	
28	priation in order to protect or increase the	
29	efficiency of the service.	

JUDICIAL

4—Supreme Court of Appeals

Acct. No. 110

1	Salaries of Judges.....	\$ 87,500.00
2	Other Personal Services.....	101,000.00
3	Current Expenses.....	20,000.00
4	Equipment	2,000.00
5	Total.....	\$ 210,500.00

APPROPRIATIONS

[Ch. 8

5—Circuit Courts

Acct. No. 111

1	Salaries of Judges.....	\$	324,600.00
2	Current Expenses.....		68,500.00
3	Total.....	\$	393,100.00

6—Judges' Retirement System

Acct. No. 112

1	To be transferred to the Judges' Retirement		
2	Fund, in accordance with the law relating		
3	thereto, upon requisition of the State		
4	Auditor	\$	25,000.00

7—State Law Library

Acct. No. 114

1	Personal Services.....	\$	15,580.00
2	Current Expenses.....		1,000.00
3	Equipment		14,500.00
4	Total.....	\$	31,080.00

8—Judicial Council

Acct. No. 118

1	To pay the mileage and traveling expenses		
2	of members.....	\$	500.00

9—Auditor's Office—Criminal Charges

Acct. No. 119

1	Criminal Charges.....	\$	180,000.00
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EXECUTIVE

10—Governor's Office

Acct. No. 120

1	Salary of Governor	\$	17,500.00
2	Other Personal Services		32,230.00
3	Current Expenses.....		9,500.00
4	Equipment		1,500.00
5	Civil Contingent Fund.....		125,000.00

6 Of this appropriation there may be ex-
 7 pended an amount not to exceed \$5,000.00
 8 to provide instruction, care and mainte-
 9 nance for persons who are deaf and blind,
 10 and for whom the state provides no
 11 facilities.

12 Of this appropriation there may be ex-
 13 pended, at the discretion of the Governor,
 14 an amount not to exceed \$1,000.00 as West
 15 Virginia's contribution to the Interstate
 16 Oil Compact Commission.

17 Custodial Fund\$ 45,000.00

18 To be used for current general expenses,
 19 including compensation of servants and
 20 employees, household maintenance, cost
 21 of official functions, and any additional
 22 household expenses occasioned by such
 23 official functions.

24 Total\$ 230,730.00

11—*Board of Probation and Parole*

Acct. No. 123

1 Personal Services\$ 150,800.00

2 Current Expenses 40,200.00

3 Equipment 2,000.00

4 Total\$ 193,000.00

FISCAL

12—*Auditor's Office—General Administration*

Acct. No. 150

1 Salary of State Auditor\$ 11,000.00

2 Other Personal Services 151,700.00

3 Current Expenses 10,800.00

4 Equipment 5,000.00

5 Total\$ 178,500.00

13—*Treasurer's Office*

Acct. No. 160

1	Salary of State Treasurer.....	\$	11,000.00
2	Other Personal Services.....		81,900.00
3	Current Expenses.....		13,800.00
4	Equipment		7,000.00
5	Total.....	\$	113,700.00

14—*Sinking Fund Commission*

Acct. No. 170

1	Personal Services.....	\$	15,640.00
2	Current Expenses.....		750.00
3	Total.....	\$	16,390.00

15—*State Tax Commissioner*

Acct. No. 180

1	Personal Services.....	\$	640,060.00
2	Current Expenses.....		184,500.00
3	Equipment		22,500.00
4	Property Evaluation		140,000.00
5	Total.....	\$	987,060.00

16—*West Virginia Board of Control*

Acct. No. 190

1	Salaries of Members.....	\$	10,000.00
2	Other Personal Services.....		37,900.00
3	Current Expenses.....		9,725.00
4	Equipment		450.00
5	Total.....	\$	58,075.00

17—*Department of Finance and Administration*

Acct. No. 210

1	Personal Services.....	\$	151,360.00
2	Current Expenses.....		19,400.00
3	Equipment		1,000.00
4	Total.....	\$	171,760.00

18—*Department of Purchases—Inventory Control*

Acct. No. 211

1	Personal Services.....	\$	17,580.00
2	Current Expenses.....		4,500.00
3	Total.....	\$	22,080.00

LEGAL

19—*Attorney General*

Acct. No. 240

1	Salary of Attorney General.....	\$	12,000.00
2	Other Personal Services.....		116,320.00
3	Current Expenses.....		8,500.00
4	Equipment		7,500.00
5	To protect the resources or tax structure of		
6	the State in controversies or legal pro-		
7	ceedings affecting same.....		4,000.00
8	Total.....	\$	148,320.00

20—*Commission on Uniform State Laws*

Acct. No. 245

1	Total.....	\$	650.00
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INCORPORATING AND RECORDING

21—*Secretary of State*

Acct. No. 250

1	Salary of Secretary of State.....	\$	11,000.00
2	Other Personal Services		35,890.00
3	Current Expenses		5,500.00
4	Equipment		2,000.00
5	Total.....	\$	54,390.00

CUSTODIAL AND SERVICE

22—*Capitol Building and Grounds*

Acct. No. 270

1	Personal Services.....	\$	165,000.00
2	Current Expenses.....		95,000.00

3	Repairs and Alterations.....	33,000.00
4	Equipment	2,700.00
5	Total.....	\$ 295,700.00

23—Central Mailing Office

Acct. No. 280

1	Personal Services.....	\$ 13,160.00
2	Current Expenses	2,000.00
3	Postage	50,000.00
4	Total.....	\$ 65,160.00

5 The Workmen's Compensation Commission,
6 Department of Public Assistance, Public
7 Service Commission, Conservation Com-
8 mission, Department of Motor Vehicles,
9 State Road Commission and State Health
10 Department shall reimburse the Postage
11 appropriation of the Central Mailing Of-
12 fice monthly for all meter service. Any
13 spending unit receiving reimbursement
14 for postage costs from the Federal Gov-
15 ernment shall refund to the Postage ac-
16 count of the Central Mailing Office such
17 amounts. Should this appropriation for
18 Postage be insufficient to meet the mailing
19 requirements of the state spending units
20 as set out above, any excess postage meter
21 service requirements shall be a proper
22 charge against the units, and each spend-
23 ing unit shall refund to the Postage appro-
24 priation of the Central Mailing Office any
25 amounts required for that department for
26 postage in excess of this appropriation.

24—Department of Purchases

Acct. No. 290

1	Personal Services	\$ 75,000.00
2	Current Expenses	16,000.00
3	Equipment	4,500.00
4	Total.....	\$ 95,500.00

EDUCATIONAL

25—*Department of Education—State Aid to Schools*

Acct. No. 295

- 1 State aid to supplement the General School
 2 Fund\$ 51,180,220.00
- 3 To be transferred to the general school fund
 4 upon the requisition of the Governor. To
 5 be distributed according to law except an
 6 amount not to exceed \$174,000.00, which
 7 sum shall be available to the Department
 8 of Education to aid counties in providing
 9 instruction for physically and mentally
 10 handicapped children: *Provided, how-*
 11 *ever,* that from the amount appropriated
 12 herein to the Department of Education to
 13 aid counties in providing instruction for
 14 the physically and mentally handicapped
 15 children, an amount not to exceed \$14,-
 16 000.00 may be used to pay the salary of a
 17 director and other administrative ex-
 18 penses for the physically and mentally
 19 handicapped children's program.
- 20 In making distribution of state aid to coun-
 21 ties as provided by law, the State Board
 22 of School Finance shall allocate to each
 23 county, state aid of not less than fifty dol-
 24 lars for each weighted pupil in the
 25 county.

26—*Department of Education—Textbook Aid*

Acct. No. 297

- 1 Textbooks for Schools.....\$ 150,000.00
- 2 To be distributed according to chapter fifty-
 3 one, acts of the Legislature, regular ses-
 4 sion, 1939.

27—*Teachers Retirement Board*

Acct. No. 298

1	Benefit Fund—Payments to Retired Teach-		
2	ers	\$	2,165,353.00
3	Employers' Accumulation Fund—To		
4	match contributions of members.....		2,632,149.00
5	Expense Fund.....		6,020.00
6	Total.....	\$	4,803,522.00

28—*West Virginia University*

Acct. No. 300

1	Personal Services	\$	4,968,750.00
2	Current Expenses		743,600.00
3	Repairs and Alterations.....		238,000.00
4	Equipment		247,000.00
5	Oak Wilt Control Research.....		10,000.00
6	State aid to students of Veterinary Medicine		28,000.00
7	State aid to Medical Students		62,500.00
8	Total.....	\$	6,297,850.00
9	Out of the above appropriation for Personal		
10	Services the sum of \$7,500.00 shall be used		
11	only for the employment of a Spray Spe-		
12	cialist who shall be stationed only at West		
13	Virginia University Farm at Kearneys-		
14	ville.		

29—*Potomac State College of West Virginia University*

Acct. No. 315

1	Personal Services	\$	260,195.00
2	Current Expenses.....		38,400.00
3	Repairs and Alterations.....		20,000.00
4	Equipment		13,000.00
5	Total.....	\$	331,595.00

30—*Marshall College*

Acct. No. 320

1	Personal Services.....	\$	1,565,630.00
2	Current Expenses.....		134,000.00

3	Repairs and Alterations.....	51,000.00
4	Equipment	54,000.00
5	Flood Wall Assessment.....	3,200.00
6	Total.....	\$ 1,807,830.00

31—Fairmont State College

Acct. No. 321

1	Personal Services	\$ 509,610.00
2	Current Expenses.....	49,000.00
3	Repairs and Alterations.....	25,000.00
4	Equipment	21,000.00
5	Total.....	\$ 604,610.00

32—Glenville State College

Acct. No. 322

1	Personal Services	\$ 328,375.00
2	Current Expenses.....	40,000.00
3	Repairs and Alterations.....	19,000.00
4	Equipment	17,000.00
5	Total.....	\$ 404,375.00

33—West Liberty State College

Acct. No. 323

1	Personal Services	\$ 349,645.00
2	Current Expenses.....	37,500.00
3	Repairs and Alterations.....	20,000.00
4	Equipment	16,400.00
5	Total.....	\$ 423,545.00

34—Shepherd College

Acct. No. 324

1	Personal Services	\$ 320,725.00
2	Current Expenses.....	38,000.00
3	Repairs and Alterations.....	20,000.00
4	Equipment	13,300.00
5	Total.....	\$ 392,025.00

35—Concord College

Acct. No. 325

1	Personal Services	\$	534,805.00
2	Current Expenses.....		48,000.00
3	Repairs and Alterations.....		25,000.00
4	Equipment		21,000.00
5	Total.....	\$	628,805.00

36—West Virginia Institute of Technology

Acct. No. 327

1	Personal Services	\$	411,405.00
2	Current Expenses.....		50,000.00
3	Repairs and Alterations.....		22,000.00
4	Equipment		45,000.00
5	Total.....	\$	528,405.00

37—West Virginia State College

Acct. No. 328

1	Personal Services	\$	765,995.00
2	Current Expenses		103,600.00
3	Repairs and Alterations.....		42,000.00
4	Equipment		30,000.00
5	Total.....	\$	941,595.00

38—Bluefield State College

Acct. No. 329

1	Personal Services.....	\$	305,970.00
2	Current Expenses.....		42,000.00
3	Repairs and Alterations		18,000.00
4	Equipment		15,000.00
5	Total.....	\$	380,970.00

39—*West Virginia State College—4-H Camp*

Acct. No. 330

1	Personal Services.....	\$	12,720.00
2	Current Expenses.....		4,500.00
3	Repairs and Alterations.....		2,900.00
4	Equipment		2,100.00
5	Total.....	\$	22,220.00

40—*West Virginia Schools for the Deaf and Blind*

Acct. No. 333

1	Personal Services	\$	365,000.00
2	Current Expenses		129,000.00
3	Repairs and Alterations		25,000.00
4	Equipment		17,500.00
5	Total.....	\$	536,500.00

41—*State FFA-FHA Camp and Conference Center*

Acct. No. 336

1	Personal Services.....	\$	13,340.00
2	Current Expenses.....		5,300.00
3	Repairs and Alterations		5,300.00
4	Equipment		5,900.00
5	Total	\$	29,840.00

42—*Department of Archives and History*

Acct. No. 340

1	Personal Services	\$	21,760.00
2	Current Expenses		4,150.00
3	Equipment		5,000.00
4	Total.....	\$	30,910.00

43—*West Virginia Library Commission*

Acct. No. 350

1	Personal Services	\$	43,970.00
2	Current Expenses		15,600.00

3	Equipment	7,300.00
4	Books and Periodicals	32,130.00
5	Total	\$ 99,000.00

CHARITIES AND CORRECTION

44—*West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services	\$ 163,820.00
2	Current Expenses	80,700.00
3	Repairs and Alterations	13,000.00
4	Equipment	5,700.00
5	Total	\$ 263,220.00

45—*Forestry Camp for Boys*

Acct. No. 371

1	Personal Services	\$ 45,240.00
2	Current Expenses	43,950.00
3	Repairs and Alterations	2,500.00
4	Equipment	3,000.00
5	Total	\$ 94,690.00

46—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services	\$ 89,100.00
2	Current Expenses	64,600.00
3	Repairs and Alterations	10,000.00
4	Equipment	10,000.00
5	Total	\$ 173,700.00

47—*West Virginia State Prison for Women*

Acct. No. 374

1	Personal Services	\$ 32,870.00
2	Current Expenses	39,800.00

3	Repairs and Alterations.....		7,000.00
4	Equipment		2,550.00
5	Total	\$	82,220.00

48—*West Virginia Penitentiary*

Acct. No. 375

1	Personal Services.....	\$	550,080.00
2	Current Expenses.....		469,000.00
3	Repairs and Alterations.....		29,500.00
4	Equipment		17,000.00
5	Total.....	\$	1,065,580.00

6 Any unexpended balances remaining in the
7 "Rebuild Sewerage System" and the
8 "Complete New Cell Block" accounts at
9 the close of the fiscal year 1956-57 are
10 hereby reappropriated for expenditures
11 during the fiscal year 1957-58.

49—*Medium Security Prison*

Acct. No. 376

1	Personal Services.....	\$	195,600.00
2	Current Expenses.....		160,000.00
3	Repairs and Alterations.....		23,000.00
4	Equipment		21,940.00
5	Total.....	\$	400,540.00

50—*West Virginia Children's Home*

Acct. No. 380

1	Personal Services.....	\$	43,530.00
2	Current Expenses.....		30,400.00
3	Repairs and Alterations.....		10,400.00
4	Equipment		3,600.00
5	Total.....	\$	87,930.00

51—*West Virginia Home for Aged and Infirm Colored
Men and Women*

Acct. No. 382

1	Personal Services.....	\$	43,480.00
2	Current Expenses.....		42,000.00
3	Repairs and Alterations.....		9,700.00
4	Equipment		8,500.00
5	Total.....	\$	103,680.00

52—*West Virginia Training School*

Acct. No. 383

1	Personal Services.....	\$	248,260.00
2	Current Expenses		145,500.00
3	Repairs and Alterations.....		11,000.00
4	Equipment		13,400.00
5	Total.....	\$	418,160.00

53—*Andrew S. Rowan Memorial Home*

Acct. No. 384

1	Personal Services.....	\$	187,680.00
2	Current Expenses.....		154,000.00
3	Repairs and Alterations.....		11,000.00
4	Equipment		6,000.00
5	Total.....	\$	358,680.00

HEALTH AND WELFARE

54—*State Health Department*

Acct. No. 400

1	Personal Services.....	\$	590,720.00
2	Current Expenses.....		58,560.00
3	Equipment		4,000.00
4	Cancer Control and Treatment.....		93,000.00

5	Tuberculosis Field Clinical and Nursing	
6	Service	8,480.00
7	Out-Patient Pneumothorax Treatment.....	20,000.00
8	Total.....	\$ 774,760.00
9	From the above appropriation for personal	
10	services there shall be paid a salary of	
11	\$15,000.00 for the Director of the Health	
12	Department.	

55—*State Water Commission*

Acct. No. 401

1	Personal Services.....	\$ 37,960.00
2	Current Expenses.....	10,000.00
3	Equipment	1,475.00
4	For cooperation with the U. S. Geological	
5	Survey for a program of stream gauging	17,500.00
6	Total.....	\$ 66,935.00

56—*Department of Veterans Affairs*

Acct. No. 404

1	Personal Services.....	\$ 155,000.00
2	Current Expenses.....	43,000.00
3	Equipment	2,500.00
4	To provide Educational Opportunities for	
5	Children of War Veterans as provided by	
6	Chapter thirty-nine, Acts of the Legisla-	
7	ture, 1943.....	15,000.00
8	Total.....	\$ 215,500.00
9	Any unexpended balance remaining in the	
10	appropriation "To Provide Educational	
11	Opportunities for Children of War Vet-	
12	erans" at the close of the fiscal year 1956-	
13	57 is hereby reappropriated for expendi-	
14	ture during the fiscal year 1957-58.	

57—*Department of Public Assistance*

Acct. No. 405

1	Personal Services.....	\$	1,091,100.00
2	Current Expenses.....		225,800.00
3	Equipment		10,000.00
4	Public Assistance Grants (Classified Aid)....		7,500,000.00
5	Aid to Crippled Children.....		300,000.00
6	Medical Services.....		850,000.00
7	Conservation of Vision and Prevention of		
8	Blindness		34,000.00
9	Child Welfare Services.....		83,700.00
10	General Relief.....		125,000.00
11	Boarding Care.....		340,000.00
12	Social Security Matching Funds.....		23,600.00
13	Total.....	\$	10,583,200.00

58—*Department of Public Assistance—
Commodity Distribution*

Acct. No. 406

1	Personal Services.....	\$	90,000.00
2	Current Expenses.....		40,000.00
3	Equipment		3,000.00
4	Total.....	\$	133,000.00

59—*Department of Mental Health*

Acct. No. 410

1	Personal Services.....	\$	161,640.00
2	Current Expenses		25,000.00
3	Equipment		10,000.00
4	Total.....	\$	196,640.00

60—*Weston State Hospital*

Acct. No. 420

1	Personal Services.....	\$	1,094,400.00
2	Current Expenses.....		727,800.00

3	Repairs and Alterations.....	60,000.00
4	Equipment	28,600.00
5	Total.....	\$ 1,910,800.00
6	Any unexpended balance remaining in the	
7	"Water Supply Account" at the close of	
8	the fiscal year 1956-57 is hereby reappro-	
9	priated for expenditure during the fiscal	
10	year 1957-58.	

61—*Spencer State Hospital*

Acct. No. 421

1	Personal Services.....	\$ 505,010.00
2	Current Expenses.....	347,000.00
3	Repairs and Alterations.....	32,450.00
4	Equipment	51,000.00
5	Total.....	\$ 935,460.00
6	All revenue collected by the above spending	
7	unit in excess of the amount required to	
8	pay the principal and interest on out-	
9	standing Clinic Bonds shall be deposited	
10	to the State Fund-General Revenue.	

62—*Huntington State Hospital*

Acct. No. 422

1	Personal Services.....	\$ 705,400.00
2	Current Expenses.....	530,390.00
3	Repairs and Alterations.....	42,000.00
4	Equipment	23,250.00
5	Total.....	\$ 1,301,040.00
6	All revenue collected by the above spending	
7	unit in excess of the amount required to	
8	pay the principal and interest on out-	
9	standing Clinic Bonds shall be deposited	
10	to the State Fund-General Revenue.	

63—*Lakin State Hospital*

Acct. No. 423

1	Personal Services.....	\$	282,030.00
2	Current Expenses.....		177,000.00
3	Repairs and Alterations.....		31,500.00
4	Equipment		13,650.00
5	Total.....	\$	504,180.00

64—*Barboursville State Hospital*

Acct. No. 424

1	Personal Services.....	\$	192,080.00
2	Current Expenses.....		127,990.00
3	Repairs and Alterations.....		19,500.00
4	Equipment		5,100.00
5	Total.....	\$	344,670.00

65—*Fairmont Emergency Hospital*

Acct. No. 425

1	Personal Services.....	\$	106,800.00
2	Current Expenses.....		70,000.00
3	Repairs and Alterations.....		6,800.00
4	Equipment		5,250.00
5	Total.....	\$	188,850.00

66—*Welch Emergency Hospital*

Acct. No. 426

1	Personal Services.....	\$	122,300.00
2	Current Expenses.....		122,300.00
3	Repairs and Alterations.....		12,500.00
4	Equipment		6,000.00
5	Total.....	\$	263,100.00

67—Hopemont Sanitarium

Acct. No. 430

1	Personal Services.....	\$	452,880.00
2	Current Expenses.....		325,000.00
3	Repairs and Alterations.....		18,000.00
4	Equipment		13,500.00
5	Total.....	\$	809,380.00

68—Pinecrest Sanitarium

Acct. No. 431

1	Personal Services.....	\$	603,480.00
2	Current Expenses.....		515,240.00
3	Repairs and Alterations.....		28,000.00
4	Equipment		16,000.00
5	Total.....	\$	1,162,720.00

69—Denmar State Hospital

Acct. No. 432

1	Personal Services.....	\$	184,140.00
2	Current Expenses.....		137,400.00
3	Repairs and Alterations.....		10,000.00
4	Equipment		6,500.00
5	Total.....	\$	338,040.00

70—Berkeley Springs Sanitarium

Acct. No. 436

1	Personal Services.....	\$	27,800.00
2	Current Expenses.....		6,800.00
3	Repairs and Alterations.....		1,700.00
4	Equipment		1,600.00
5	Total.....	\$	37,900.00

71—*Non-State Institutions*

Acct. No. 437

1	Morris Memorial Hospital.....	\$	10,000.00
2	Marmet Hospital, Inc.....		7,500.00
3	Total.....	\$	17,500.00
4	To be expended by the Department of Pub-		
5	lic Assistance to meet actual per capita		
6	costs for hospitalization of needy West		
7	Virginia patients at these institutions.		

72—*State Board of Education—Rehabilitation Division*

Acct. No. 440

1	Personal Services.....	\$	158,800.00
2	Current Expenses.....		36,000.00
3	Rehabilitation Center.....		100,000.00
4	Case Services.....		226,100.00
5	Supervisory Service for Vending Stand Pro-		
6	gram for the Blind.....		8,120.00
7	Total.....	\$	529,020.00

BUSINESS AND INDUSTRIAL RELATIONS

73—*Bureau of Labor and Department of Weights and Measures*

Acct. No. 450

1	Personal Services.....	\$	196,650.00
2	Current Expenses.....		59,000.00
3	Equipment		5,000.00
4	Total.....	\$	260,650.00

74—*Department of Mines*

Acct. No. 460

1	Personal Services.....	\$	574,540.00
2	Current Expenses.....		141,500.00
3	Equipment		10,000.00
4	Total.....	\$	726,040.00

75—*Commission on Interstate Cooperation*

Acct. No. 472

1	Total	\$	10,000.00
2	Out of the above appropriation the sum of		
3	\$7,500.00 may be made available for West		
4	Virginia's membership in the Council of		
5	State Governments.		

76—*Interstate Commission on Potomac River Basin*

Acct. No. 473

1	West Virginia's contribution to Potomac		
2	River Basin Interstate Commission.....	\$	3,600.00

77—*Ohio River Valley Water Sanitation Commission*

Acct. No. 474

1	West Virginia's contribution to the Ohio		
2	River Valley Water Sanitation Commis-		
3	sion	\$	15,860.00

78—*Southern Regional Education Board*

Acct. No. 475

1	West Virginia's contribution to Southern		
2	Regional Education Board	\$	28,000.00
3	To be expended upon requisition of the		
4	Governor.		

79—*Department of Banking*

Acct. No. 480

1	Personal Services.....	\$	71,660.00
2	Current Expenses.....		27,980.00
3	Equipment		1,000.00
4	Total.....	\$	100,640.00

80—*West Virginia State Aeronautics Commission*

Acct. No. 485

1	Personal Services.....	\$	8,820.00
2	Current Expenses.....		3,500.00
3	Equipment		1,750.00
4	Aerial Markers.....		2,000.00
5	Total.....	\$	16,070.00

81—*West Virginia Industrial and Publicity Commission*

Acct. No. 486

1	For Administration, Investigation and Re-		
2	search	\$	100,000.00
3	In the event House Bill No. 293, creating the		
4	West Virginia Business Development Au-		
5	thority becomes law, this appropriation		
6	shall be available to that authority.		

82—*West Virginia Centennial Commission*

Acct. No. 487

1	Expenses for Planning 1963 Centennial		
2	Celebration	\$	10,000.00

83—*West Virginia Non-Intoxicating Beer Commissioner*

Acct. No. 490

1	Personal Services.....	\$	81,650.00
2	Current Expenses.....		41,500.00
3	Equipment		800.00
4	Total.....	\$	123,950.00

84—*West Virginia Racing Commission*

Acct. No. 495

1	Personal Services.....	\$	48,900.00
2	Current Expenses.....		8,400.00
3	Total.....	\$	57,300.00

AGRICULTURE

85—*Department of Agriculture*

Acct. No. 510

1	Salary of Commissioner.....	\$	11,000.00
2	Other Personal Services.....		134,100.00
3	Current Expenses.....		63,600.00
4	Equipment		8,000.00
5	Eradication and Control of White Pine		
6	Blister		15,000.00
7	Eradication and Prevention of Livestock		
8	Diseases		145,000.00
9	Eradication and Control of Japanese beetle		
10	and other plant pests.....		14,880.00
11	Aid to Dairy Development Program.....		51,820.00
12	Eradication and Control of Oak Wilt.....		40,000.00
13	Total.....	\$	483,400.00

86—*Department of Agriculture—Soil Conservation Committee*

Acct. No. 512

1	Personal Services.....	\$	48,100.00
2	Current Expenses.....		22,250.00
3	Total.....	\$	70,350.00

87—*Department of Agriculture—Marketing and Research*

Acct. No. 513

1	For cooperation with the Federal Govern-		
2	ment in a program of marketing and re-		
3	search	\$	59,000.00
4	Any part or all of this appropriation may		
5	be transferred to Special Revenue Fund		
6	for the purpose of matching federal funds		
7	for the above named program.		
8	Any unexpended balance remaining in the		
9	Farm Market Facilities Account at the		

- 10 close of the fiscal year 1956-57 is hereby
 11 reappropriated for expenditure during the
 12 fiscal year 1957-58.

88—*Department of Agriculture—Agricultural Awards*

Acct. No. 515

1	Agricultural Awards.....	\$	46,500.00
2	West Virginia State Fair.....		22,500.00
3	Total.....	\$	69,000.00
4	To be expended at the discretion of the		
5	Commissioner of Agriculture in accord-		
6	ance with law.		

CONSERVATION AND DEVELOPMENT

89—*Geological and Economic Survey Commission*

Acct. No. 520

1	Personal Services.....	\$	72,570.00
2	Current Expenses.....		27,800.00
3	Equipment		6,500.00
4	Cooperative Mapping Program.....		60,000.00
5	Total.....	\$	166,870.00
6	Of the above appropriation for Current Ex-		
7	penses, the sum of \$15,000.00 may be used		
8	to cooperate with the United States Geo-		
9	logical Survey in Ground Waters Re-		
10	sources Study.		
11	Of the above appropriation for Cooperative		
12	Mapping Program, the sum of \$18,000.00		
13	may be used for preparation of accurate		
14	geographic and political maps of West		
15	Virginia.		

90—*Conservation Commission*

Acct. No. 521

1	Personal Services.....	\$	327,740.00
2	Current Expenses		16,000.00

3	Oak Wilt Control	4,000.00
4	Advertising and Publicity	50,000.00
5	Total	\$ 397,740.00
6	Out of the above appropriation, the sum of	
7	\$80,000.00 under Personal Services and	
8	\$16,000.00 Current Expenses shall be used	
9	to match federal funds under the Pittman-	
10	Robertson and Dingell-Johnson programs.	

91—*Conservation Commission—Division of State Parks*

Acct. No. 522

1	Personal Services	\$ 98,790.00
2	Current Expenses	61,000.00
3	Repairs and Alterations	42,700.00
4	Equipment	3,900.00
5	Forestry Camp Expense	20,000.00
6	Total	\$ 226,390.00

92—*Conservation Commission—Clarke-McNary*

Acct. No. 523

1	For cooperation with the United States De-	
2	partment of Agriculture in Fire Preven-	
3	tion and Control	\$ 75,000.00
4	Any unexpended balance remaining in this	
5	account at the close of the fiscal year 1956-	
6	57 is hereby reappropriated for expendi-	
7	diture during the fiscal year 1957-58.	

93—*Conservation Commission—Historical Monuments
and Parks*

Acct. No. 561

1	Care and Maintenance of:	
2	Point Pleasant Battle Monument and	
3	Park	\$ 4,000.00

APPROPRIATIONS

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4	Rumsey Monument and Park.....	400.00
5	Morgan Morgan Memorial.....	500.00
6	Fairfax Stone.....	400.00
7	Booker T. Washington Park.....	500.00
8	Cathedral Park.....	2,000.00
9	Pinnacle Rock Park.....	2,500.00
10	Total.....	\$ 10,300.00

94—Department of Veterans' Affairs

Acct. No. 564

1	In aid of Memorial Day Patriotic Exercises \$	2,000.00
2	To be expended subject to the approval of	
3	the Department of Veterans Affairs upon	
4	presentation of satisfactory plans by the	
5	Grafton G.A.R. Post, American Legion,	
6	Veterans of Foreign Wars and Sons of	
7	Veterans.	

PROTECTION

95—Department of Public Safety

Acct. No. 570

1	Personal Services	\$ 1,053,780.00
2	Current Expenses	614,120.00
3	Repairs and Alterations	21,960.00
4	Equipment	112,500.00
5	Total.....	\$ 1,802,360.00

96—Adjutant General—State Militia

Acct. No. 580

1	Personal Services	\$ 54,000.00
2	Current Expenses.....	151,620.00
3	Repairs and Alterations	7,900.00
4	Equipment	8,460.00
5	Compensation of Commanding Officers,	
6	Clerical Allowances and Uniform Allow-	
7	ances	70,760.00

8	Property Maintenance		47,240.00
9	Total	\$	339,980.00

97—*Division of Civilian Defense*

Acct. No. 581

1	Personal Services	\$	19,770.00
2	Current Expenses		6,000.00
3	Equipment		3,700.00
4	Total	\$	29,470.00

98—*State Armory Board*

Acct. No. 582

1	For insurance, maintenance, repair and		
2	equipment for state-owned armories	\$	40,000.00

99—*State Board of Education—Insurance*

Acct. No. 584

1	Fire Insurance Premiums	\$	4,400.00
2	To pay extended coverage on buildings at		
3	state colleges and institutions under the		
4	supervision of the State Board of Edu-		
5	cation.		
6	To insure contents of non-revenue producing		
7	buildings		8,000.00
8	This appropriation is for premiums for a		
9	one-year period.		
10	Total	\$	12,400.00

100—*State Board of Certified Public Accountants*

Acct. No. 586

1	To pay the per diem of members and other		
2	general expenses	\$	2,000.00
3	From Collections		2,000.00

101—*West Virginia State Board of Examiners for
Practical Nurses*

Acct. No. 587

1 To pay the per diem of members and other		
2 general expenses	\$	10,000.00
3 <i>From Collections</i>		10,000.00

102—*State Board of Examiners of Registered Nurses*

Acct. No. 588

1 To pay the per diem of members and other		
2 general expenses	\$	27,750.00
3 <i>From Collections</i>		27,750.00

103—*State Board of Dental Examiners*

Acct. No. 589

1 To pay the per diem of members and other		
2 general expenses	\$	5,000.00
3 <i>From Collections</i>		5,000.00

104—*State Board of Pharmacy*

Acct. No. 590

1 To pay the per diem of members and other		
2 general expenses	\$	12,000.00
3 <i>From Collections</i>		12,000.00

105—*State Board of Osteopathy*

Acct. No. 591

1 To pay the per diem of members and other		
2 general expenses	\$	1,500.00
3 <i>From Collections</i>		1,500.00

106—*State Board of Optometry*

Acct. No. 592

1 To pay the per diem of members and other		
2 general expenses	\$	2,500.00
3 <i>From Collections</i>		2,500.00

107—*State Board of Embalmers and Funeral Directors*

Acct. No. 593

1 To pay the per diem of members and other		
2 general expenses.....	\$	10,000.00
3 <i>From Collections</i>		10,000.00

108—*State Board of Registration for Professional Engineers*

Acct. No. 594

1 To pay the per diem of members and other		
2 general expenses.....	\$	15,000.00
3 <i>From Collections</i>		15,000.00

109—*State Board of Architects*

Acct. No. 595

1 To pay the per diem of members and other		
2 general expenses.....	\$	3,000.00
3 <i>From Collections</i>		3,000.00

110—*State Veterinary Board*

Acct. No. 596

1 To pay the per diem of members and other		
2 general expenses.....	\$	500.00
3 <i>From Collections</i>		500.00

111—*State Board of Law Examiners*

Acct. No. 597

1 To pay the per diem of members and other		
2 general expenses.....	\$	2,400.00

112—*Auditor's Office—Social Security*

Acct. No. 598

1 To match contributions of state employees		
2 for social security.....	\$	475,000.00

3 The above appropriation is intended to cover
 4 the state's share of social security costs for
 5 those spending units operating from Gen-
 6 eral Revenue Fund and General School
 7 Fund appropriations. The State Road Com-
 8 mission, Department of Motor Vehicles,
 9 Workmen's Compensation Commission,
 10 Public Service Commission, and other de-
 11 partments operating from Special Revenue
 12 Funds and/or Federal Funds shall pay
 13 their proportionate share of the social se-
 14 curity cost for their respective divisions.

15 Any unexpended balance remaining in the
 16 appropriation "To match contributions of
 17 state employees for social security" at the
 18 close of the fiscal year 1956-57 is hereby
 19 reappropriated for expenditure during the
 20 fiscal year 1957-58.

Sec. 2. *Appropriations from Other Funds.*—From the
 2 funds designated there is hereby appropriated condition-
 3 ally upon the fulfillment of the provisions set forth in
 4 chapter thirty-nine, acts of the Legislature, regular session,
 5 one thousand nine hundred thirty-nine, the following
 6 amounts, as itemized, for expenditure during the fiscal
 7 year one thousand nine hundred fifty-eight.

113—*State Road Commission—General Administration
 and Engineering*

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1 Personal Services	\$	425,000.00
2 Current Expenses		90,000.00
3 Equipment		8,000.00
4 Total	\$	523,000.00

5 In addition to the foregoing appropriations
 6 and claims as authorized by this act or by
 7 law to be paid from the state road fund,

8 the balance or residue of the annual re-
 9 cepts of the state road fund is hereby ap-
 10 propriated first for the payment of interest
 11 on and principal of outstanding road
 12 bonds, and thereafter for maintenance,
 13 construction and reconstruction of state
 14 roads, in accordance with the provisions
 15 of chapter seventeen, code of West Vir-
 16 ginia, 1931, as amended.

114—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	550,000.00
2	Current Expenses		185,000.00
3	Equipment		9,000.00
4	Purchase of License Plates		120,000.00
5	Social Security Matching Fund		12,500.00
6	Total	\$	876,500.00

115—*State Tax Commissioner—Gasoline Tax
 Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	74,520.00
2	Current Expenses		21,000.00
3	Equipment		1,500.00
4	Social Security Matching Fund		1,600.00
5	Total	\$	98,620.00

116—*State Board of Education*

Acct. No. 700

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	25,700.00
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2	Current Expenses	10,000.00
3	Equipment	1,000.00
4	Total	\$ 36,700.00

117—*State Board of Education—Vocational Division*

Acct. No. 701

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services.....	\$ 23,310.00
2	Current Expenses.....	6,500.00
3	Equipment	1,000.00
4	Vocational Aid	300,000.00
5	Total	\$ 330,810.00

118—*Department of Education—Veterans Education*

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services.....	\$ 51,020.00
2	Current Expenses.....	11,610.00
3	Total	\$ 62,630.00

- 4 Expenditures from this appropriation shall
 5 not exceed the amount to be reimbursed
 6 by the Federal Government.

119—*Department of Education*

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salary of State Superintendent	\$ 12,000.00
2	Other Personal Services	185,980.00
3	Current Expenses	71,500.00
4	Equipment	5,600.00
5	Total	\$ 275,080.00

120—*State Board of School Finance*

Acct. No. 704

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services.....	\$	13,960.00
2	Current Expenses.....		2,800.00
3	Total.....	\$	16,760.00

121—*Department of Education—School Lunch Program*

Acct. No. 705

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services.....	\$	46,000.00
2	Current Expenses.....		10,300.00
3	Aid to Counties—Includes hot lunches and		
4	canning for hot lunches.....		125,000.00
5	Total.....	\$	181,300.00

122—*Department of Education*

Acct. No. 706

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salaries of County Superintendents.....	\$	64,000.00
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123—*Department of Education*

Acct. No. 707

TO BE PAID FROM GENERAL SCHOOL FUND

1	State Aid to Children's Homes.....	\$	25,000.00
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124—*Auditor's Office*

Acct. No. 708

TO BE PAID FROM GENERAL SCHOOL FUND

1	Premiums on Bonds of County Clerks.....	\$	2,000.00
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125—*Auditor's Office—Land Department*

Acct. No. 709

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	87,980.00
2	Current Expenses		4,300.00
3	Equipment		18,900.00
4	Total	\$	111,180.00

126—*Department of Education*

Acct. No. 715

TO BE PAID FROM GENERAL SCHOOL FUND

1	Scholarships for Teacher Training	\$	50,000.00
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127—*Real Estate Commission*

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	16,000.00
2	Current Expenses		10,000.00
3	Equipment		1,000.00
4	Social Security Matching Fund		300.00
5	Total	\$	27,300.00

6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund out of
 8 collections of license fees as provided by
 9 law.

128—*Public Land Corporation*

Acct. No. 802

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	9,750.00
2	Current Expenses		4,000.00
3	Total	\$	13,750.00

4 The total amount of this appropriation shall
 5 be paid from Special Revenue Fund out of
 6 income received by the corporation as
 7 provided by law.

129—*West Virginia Racing Commission*
 Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses.....	\$ 5,000.00
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2 The total amount of this appropriation shall
 3 be paid from Special Revenue Fund out
 4 of collections of license fees and fines as
 5 provided by law.

6 No expenditures shall be made from this
 7 account except for hospitalization, medi-
 8 cal care, and/or funeral expenses for per-
 9 sons contributing to this fund.

130—*Auditor's Office—Land Department*
Operating Fund
 Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

1	To pay deficits for publications and to de-	
2	puty commissioners in connection with	
3	delinquent land suits.....	\$ 12,500.00

4 The total amount of this appropriation shall
 5 be paid from Special Revenue Fund out of
 6 fees and collections as provided by law.

131—*Department of Purchases—Revolving Fund*
 Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$ 74,460.00
2	Current Expenses.....	17,700.00
3	Equipment	5,500.00
4	Social Security Matching Fund.....	1,600.00
5	Total.....	\$ 99,260.00

6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund as
 8 provided by Chapter 25-A, Article 2, Code
 9 of West Virginia.

10 The above appropriation includes salaries
 11 and operating expenses.

12 There is hereby appropriated from this
 13 fund, in addition to the above appropria-
 14 tion, the necessary amount for the pur-
 15 chase of supplies for resale.

132—*Department of Agriculture*

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services.....	\$	135,600.00
2 Current Expenses.....		40,000.00
3 Equipment.....		9,000.00
4 Social Security Matching Fund.....		2,700.00
5 Total.....	\$	187,300.00

6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund out
 8 of collections made by the Department
 9 of Agriculture as provided by law. It is
 10 the intention that special funds in excess
 11 of the amounts hereby appropriated shall
 12 be made available by budget amend-
 13 ments upon request of the Commissioner
 14 of Agriculture.

133—*State Committee of Barbers and Beauticians*

Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services.....	\$	17,300.00
2 Current Expenses.....		8,400.00
3 Social Security Matching Fund.....		350.00
4 Total.....	\$	26,050.00

5 The total amount of this appropriation shall
 6 be paid from Special Revenue Fund out
 7 of collections made by the State Commit-
 8 tee of Barbers and Beauticians as provid-
 9 ed by law.

134—*Insurance Commissioner*

Acct. No. 826

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$	100,000.00
2	Current Expenses.....		13,000.00
3	Equipment		1,000.00
4	Social Security Matching Fund		1,860.00
5	Total	\$	115,860.00

6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund out
 8 of collections for license and report fees as
 9 provided by law.

135—*Insurance Commissioner—Fire Marshal*

Acct. No. 827

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$	81,000.00
2	Current Expenses		26,000.00
3	Equipment		6,000.00
4	Building Repair and Maintenance.....		3,000.00
5	Social Security Matching Fund		1,650.00
6	Total	\$	117,650.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out
 9 of collections of the special tax of one-
 10 half of one per cent of premium receipts
 11 of fire insurance companies as provided
 12 by law.

136—*Public Service Commission*

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners.....	\$	24,000.00
2	Other Personal Services.....		245,390.00
3	Current Expenses.....		32,500.00
4	Equipment		4,600.00
5	Social Security Matching Fund		4,560.00
6	Total.....	\$	311,050.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out
 9 of collections for special license fees from
 10 public service corporations as provided
 11 by law. Out of the above appropriation,
 12 \$5,000.00 may be transferred to the State
 13 Water Commission for use in cooperation
 14 with the U. S. Geological Survey in a pro-
 15 gram of stream gauging.

137—*Public Service Commission—Motor Carrier
Division*

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$	140,800.00
2	Current Expenses.....		42,000.00
3	Equipment		4,800.00
4	Social Security Matching Fund.....		2,960.00
5	Total.....	\$	190,560.00

6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund out of
 8 receipts collected for or by the Public
 9 Service Commission pursuant to and in
 10 the exercise of regulatory authority over
 11 motor carriers as authorized by law.

138—*Conservation Commission*

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$	525,000.00
2	Current Expenses.....		354,500.00
3	Repairs and Alterations.....		60,000.00
4	Equipment		62,000.00
5	Buildings, Land and Improvements		15,000.00
6	Land Purchase.....		20,000.00
7	National Forests.....		60,000.00
8	White Pine Blister Rust Control.....		5,000.00
9	Oak Wilt Control.....		4,000.00
10	For payment of bounties		2,000.00
11	For construction of ponds and small lakes ...		50,000.00
12	For restocking of game.....		6,000.00
13	Social Security Matching Fund.....		12,500.00
14	Total.....	\$	1,176,000.00

15 The total amount of this appropriation shall
 16 be paid from Special Revenue Fund out
 17 of fees collected by the Conservation Com-
 18 mission. Expenditures shall be limited to
 19 the amounts appropriated except for Fed-
 20 eral Funds received and Special Funds
 21 collected at state parks. Special Funds in
 22 excess of the amounts hereby appropriat-
 23 ed may be made available by budget
 24 amendment upon request of the Conserva-
 25 tion Commission and approval of The
 26 Board of Public Works for any emergency
 27 which might arise in the operation of this
 28 division during the fiscal year.

139—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$	79,020.00
2	Current Expenses.....		72,470.00

3	Repairs and Alterations.....	6,000.00
4	Equipment	12,000.00
5	Social Security Matching Fund.....	325.00
6	Total.....	\$ 169,815.00

7 The total amount of this appropriation shall
 8 be paid from Special Revenue Fund out
 9 of fees collected for inspection stickers as
 10 provided by law.

140—*Department of Public Safety—Instruction
 Permit Fees*

Acct. No. 836

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$ 41,340.00
2	Current Expenses.....	26,830.00
3	Total.....	\$ 68,170.00

4 The total amount of this appropriation shall
 5 be paid from Special Revenue Fund out of
 6 fees collected for instruction permits as
 7 provided by law.

141—*West Virginia Liquor Control Commission*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Members	\$ 10,000.00
2	Other Personal Services.....	2,700,000.00
3	Current Expenses.....	720,000.00
4	Repairs and Alterations	20,000.00
5	Equipment	30,000.00
6	Social Security Matching Fund.....	64,000.00
7	Total.....	\$ 3,544,000.00

8 The total amount of this appropriation shall
 9 be paid from Special Revenue Fund out
 10 of liquor revenues.

11 The above appropriation includes the salaries of store personnel, store inspectors, store operating expenses and equipment; and salaries, expenses and equipment for administration offices.

16 There is hereby appropriated from liquor revenues, in addition to the above appropriation, the necessary amount for the purchase of liquor, as provided by law.

142—*West Virginia Merit System Council*

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$	37,250.00
2	Current Expenses.....		10,450.00
3	Social Security Matching Fund.....		550.00
4	Total.....	\$	48,250.00

5 The total amount of this appropriation shall be paid from Special Revenue Fund supported by participating agencies as provided by law.

143—*Department of Labor—Bedding Division*

Acct. No. 843

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$	7,980.00
2	Current Expenses.....		8,100.00
3	Total.....	\$	16,080.00

4 The total amount of this appropriation shall be paid from Special Revenue Fund out of fees, fines and penalties as provided by law.

144—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services.....	\$	605,325.00
2	Current Expenses.....		247,360.00
3	Equipment		11,000.00
4	Social Security Matching Fund.....		13,000.00
			<hr/>
5	Total.....	\$	876,685.00

6 There is hereby authorized to be paid out of
7 the above appropriation for Current Ex-
8 penses the amount necessary for the
9 premiums on bonds given by the State
10 Treasurer and bond custodian for the pro-
11 tection of the Workmen's Compensation
12 Fund.

Sec. 3—*Supplemental and Deficiency Appropriations.*—

2 From the State Fund, General Revenue, except as other-
3 wise provided, there are hereby appropriated the following
4 amounts, as itemized, for expenditure during the fiscal year
5 one thousand nine hundred fifty-seven to supplement the
6 1956-57 appropriations, and to be available for expenditure
7 upon date of passage.

145—*Board of Probation and Parole*

Acct. No. 123

1	Current Expenses.....	\$	10,000.00
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146—*Auditor's Office—General Administration*

Acct. No. 150

1	Salary of State Auditor.....	\$	1,738.91
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147—*Treasurer's Office*

Acct. No. 160

1	Salary of State Treasurer.....	\$	1,738.91
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148—*Attorney General*

Acct. No. 240

1 Salary of Attorney General..... \$ 2,086.70

149—*Secretary of State*

Acct. No. 250

1 Salary of Secretary of State..... \$ 1,738.91

150—*Department of Education—State Aid to Schools*

Acct. No. 295

1 Any unexpended balance remaining in the
 2 appropriation for "State Aid for School
 3 Building Program" at the close of the
 4 fiscal year 1956-57 is hereby reappropri-
 5 ated for expenditure during the fiscal year
 6 1957-58.

7 State Aid to supplement the general school
 8 fund \$ 26,562.00

9 To be transferred to the general school fund
 10 upon the requisition of the Governor.
 11 The purpose of this request is to appro-
 12 priate an amount, not to exceed \$26,562.00,
 13 as a supplement to cover the portion or
 14 loss of state aid which Morgan County
 15 suffered as the result of an error in the
 16 original appraisal report of the Tax Com-
 17 missioner for the year 1955.

151—*West Virginia Home for Aged and Infirm
Colored Men and Women*

Acct. No. 382

1 Personal Services..... \$ 5,000.00

152—*Department of Veterans Affairs*

Acct. No. 404

1 Korean Bonus—Administration..... \$ 60,000.00

2 The General Revenue Fund is to be reim-
 3 bursed this amount from the proceeds of
 4 the sale of bonds. The above appropriation
 5 for the fiscal year 1956-57 is to remain in
 6 effect until the date bonds are sold.

153—*Spencer State Hospital*

Acct. No. 421

1 Architect Fees..... \$ 2,711.73

154—*Lakin State Hospital*

Acct. No. 423

1 Reimburse Governor's Contingent Fund \$ 21,067.00

155—*West Virginia Racing Commission*

Acct. No. 495

1 Personal Services..... \$ 5,170.00

2 Current Expenses..... 2,450.00

3 Total..... \$ 7,620.00

156—*Department of Agriculture*

Acct. No. 510

1 Salary of Commissioner..... \$ 1,738.91

157—*Conservation Commission—State Parks*

Acct. No. 522

1 Forestry Camp Expense..... \$ 16,000.00

158—*Conservation Commission—Clarke-McNary*

Acct. No. 523

1 For cooperation with the United States De-
 2 partment of Agriculture in Fire Preven-
 3 tion and Control..... \$ 40,000.00

159—*Department of Education*

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salary of State Superintendent.....	\$	2,202.62
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Sec. 4.—*Awards for Claims Against the State*—From the fund designated there is hereby appropriated for the remainder of the fiscal year 1956-57, and to remain in effect until June 30, 1958, for payment of claims against the state the following amounts, as itemized.

Claims Versus State Tax Commissioner

TO BE PAID FROM GENERAL REVENUE FUND

1	Reid-Boyce Tire & Tread Company	\$	598.89
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Claims Versus West Virginia Board of Education

TO BE PAID FROM GENERAL REVENUE FUND

1	Eastern Greyhound Lines.....	\$	881.20
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Claims Versus State Road Commission

TO BE PAID FROM STATE ROAD FUND

1	Automobile Ins. Co. of Hartford, Connecticut		
2	cut	\$	12.24
3	Virginia Electric and Power Company.....		129.00
4	Freedom-Valvoline Oil Company.....		128.46
5	Security Trust Company.....		280.00
6	Martha S. Painter, Admx. estate of Anna B. Summers, deceased.....		1,600.00
7	Dorr Summers.....		8,400.00
8	D. C. Summers.....		4,300.00
9	A. M. Mays.....		1,500.00
10			

Sec. 5. *Appropriations from Surplus Revenues*.—The following items are appropriated from the General Revenue Fund, subject to the following terms and conditions:

(a) The following items are hereby appropriated and are to be available for expenditure only out of the surplus in the Treasury on the first day of July, 1957, or at the time

7 release or encumbrance of any such items is made, subject
8 to the conditions and limitations hereinafter expressed.

9 (b) The Board of Public Works, at its discretion, may
10 release a part or all of any of the items hereinafter set forth
11 in this section at any time after date of passage of this act,
12 provided, that the total of such releases made prior to July
13 1, 1957, shall not exceed the actual surplus in the treasury
14 as of July 1, 1956, which is reported at approximately
15 \$2,200,000.00.

16 (c) Expenditures authorized, which are for construction
17 purposes, shall be for a complete and usable unit or project
18 including necessary equipment, and in any case where ad-
19 ditional funds are available, by aid from a federal agency
20 or other source, such fact may be considered by the board
21 in determining what items should at any time be encum-
22 bered or released for expenditure: *Provided*, That in mak-
23 ing such release the board shall first determine that all
24 funds available will be provided for completion of a com-
25 plete and usable unit or project, including necessary
26 equipment.

27 (d) Any of the items under this section may be released
28 or encumbrances made therefor at any time after the first
29 day of July, 1957, as the board may deem proper, subject
30 to the limitations herein.

31 Subject to the foregoing conditions, the following appro-
32 priations are made for the purposes named in this section:

33 Item 1: The Board of Public Works—

34 Repairs, Alterations and Furnishings for

35 Governor's Mansion.....\$ 100,000.00

36 No part of the above appropriation shall be
37 released until complete plans and specifi-
38 cations have been submitted to and ap-
39 proved by the Board of Public Works.

40 Item 2: West Virginia University: (a) to
41 complete Chemistry Laboratories, \$45,000.00;

42 (b) for purchase of land, \$70,000.00; (c) to
43 construct Barns and Stalls at Jackson's Mill,

44 \$50,000.00\$ 165,000.00

45	Item 3: Potomac State College, to reno-	
46	vate Davis Hall	\$ 105,000.00
47	Item 4: Marshall College: (a) to repair	
48	third floor of Old Main Building, \$20,000.00;	
49	(b) to repair and renovate Gymnasium,	
50	\$25,000.00; (c) for alterations and equipment	
51	for College Library, \$32,000.00	\$ 77,000.00
52	Item 5: Fairmont State College: (a) to	
53	purchase air-cooling equipment for Library	
54	Building, \$20,000.00; (b) to purchase gas	
55	furnace for Gymnasium, \$3,000.00	\$ 23,000.00
56	Item 6: Glenville State College, to reno-	
57	vate and fireproof Administration Building \$	250,000.00
58	Item 7: West Liberty State College, for	
59	additional classrooms for Health and Physi-	
60	cal Education Building	\$ 100,000.00
61	Item 8: Shepherd College: (a) to purchase	
62	Shepherdstown Grade School, \$40,000.00;	
63	(b) to complete Athletic Field, \$30,000.00 ...	\$ 70,000.00
64	Item 9: West Virginia Institute of Tech-	
65	nology, for renovation of Main Building	\$ 200,000.00
66	Item 10: West Virginia Schools for the	
67	Deaf and Blind, to construct Dining Room	
68	and Kitchen	\$ 190,000.00
69	Item 11: West Virginia Industrial School	
70	for Boys: (a) to complete Swimming Pool	
71	and purchase equipment for Gymnasium,	
72	\$25,000.00; (b) for rewiring of Administra-	
73	tion Building, \$5,000.00	\$ 30,000.00
74	Item 12: Forestry Camp for Boys:	
75	(a) to construct Recreation Building, \$5,-	
76	450.00; (b) to construct Laundry Building,	
77	\$2,180.00	\$ 7,630.00
78	The foregoing amount to be expended pro-	
79	vided a new site is selected in the imme-	
80	diately vicinity of the present site.	

81	Item 13: West Virginia Industrial Home	
82	for Girls: (a) to construct and equip two	
83	(2) Cottages, \$425,000.00; (b) to install	
84	sprinkler system and rewire Jones Cottage,	
85	\$23,000.00	\$ 448,000.00
86	Item 14: West Virginia Penitentiary: (a)	
87	to resurface floor Main Dining Hall, \$17,-	
88	000.00; (b) to reroof and rewire Main Din-	
89	ing Room and Kitchen, \$10,000.00; (c) to re-	
90	place Walls, Stairways and rewire Adminis-	
91	tration Building, \$8,000.00; (d) to install one	
92	hundred (100) Maximum Security Cells in	
93	New Cell Block, \$80,000.00; (e) for general	
94	repair to old cell blocks, \$25,000.00.....	\$ 140,000.00
95	Item 15: Andrew S. Rowan Memorial	
96	Home: (a) to construct building to replace	
97	Ball Building and to equip building, \$488,-	
98	750.00; (b) to purchase and install New	
99	Boiler, \$12,000.00; (c) for extension of Wa-	
100	ter Mains, \$6,000.00	\$ 506,750.00
101	Item 16: Weston State Hospital: (a) to	
102	purchase and install Elevator in L, M, N and	
103	O Buildings, \$25,000.00; (b) to install fire-	
104	proof floors in wards 1 and 4, and first floor	
105	of Administration Building, \$30,000.00; (c)	
106	to construct addition to Laundry, \$30,000.00;	
107	(d) to install new floor in Patient's Dining	
108	Room, \$16,500.00; (e) for overhauling and	
109	reinforcing Main Building steam distribu-	
110	tion system, \$25,000.00	\$ 126,500.00
111	Item 17: Spencer State Hospital: (a) to	
112	renovate, fireproof and equip Main Wards	
113	1, 2, 3, 4, 5, and 6, \$850,000.00; (b) to con-	
114	struct settling basin for Water Treatment	
115	Plant, \$17,500.00; (c) to reroof Power Plant	
116	Building, \$12,500.00; (d) for addition to and	
117	repair Laundry Building, \$10,000.00; (e) to	
118	reroof and rewire Administration Building,	

119	\$40,000.00; (f) to purchase and install two	
120	(2) Fire Escapes, \$20,000.00.....\$	950,000.00
121	Item 18: Huntington State Hospital: (a)	
122	for such building or buildings or fireproofing	
123	and major repairs and equipment of present	
124	buildings, as may be designated by the	
125	Board of Public Works upon recommenda-	
126	tion of the Board of Control, \$1,625,000.00;	
127	(b) to install ventilation in Building 1-A,	
128	\$32,000.00; (c) to purchase and install High	
129	Pressure Boiler, \$30,000.00; (d) to construct	
130	and equip West Wing on Building No. 7,	
131	\$200,000.00	\$ 1,887,000.00
132	Item 19: Lakin State Hospital: (a) to	
133	provide Water System, \$60,000.00; (b) to	
134	renovate Ward Buildings, Administration	
135	Building, and Ground Improvements, \$500,-	
136	000.00; (c) to construct Laundry and Shop	
137	Building, \$100,000.00; (d) Kitchen and Din-	
138	ing Center, \$135,000.00	\$ 795,000.00
139	Item 20: Barboursville State Hospital: (a)	
140	to construct Men's Dormitory, \$100,000.00;	
141	(b) to replace windows in Male Patients'	
142	Building, \$25,000.00	\$ 125,000.00
143	Item 21: Welch Emergency Hospital, to	
144	purchase and install two (2) Boilers	\$ 34,700.00
145	Item 22: State Armory Board, to match	
146	Federal Funds for construction of new	
147	Armories	\$ 95,650.00
148	Item 23: Conservation Commission—Di-	
149	vision of State Parks: (a) Cedar Creek	
150	State Park for park improvements, \$25,-	
151	000.00; (b) Construction of recreational	
152	facilities in area of Logan, Mingo, Boone,	
153	Lincoln counties, \$50,000.00; (c) North Bend	
154	State Park for improvement, \$25,000.00; (d)	
155	Sutton Reservoir for survey of park develop-	

156 ment, \$3,000.00; (e) War Creek Recreation
 157 Development for improvements, \$20,000.00;
 158 (f) Audra State Park; for blacktop parking
 159 areas, \$4,000.00; for picnic areas expansion
 160 (75 tables), \$2,100.00; for new trails, roads,
 161 water and toilets, \$7,000.00; (g) Blackwater
 162 Falls State Park: for tenting area water
 163 system, \$4,000.00; for public toilets, \$8,000.00;
 164 (h) Cathedral State Park, for land purchase,
 165 \$2,500.00; (i) Tygart Lake State Park: for
 166 tenting, water, sewage and toilets, \$8,000.00;
 167 for game court expansion, \$3,000.00; for
 168 electric line installation to new cabins,
 169 \$2,800.00; (j) Spring Run Hatchery, for
 170 water and ponds addition, \$10,000.00; (k)
 171 construction of recreational facilities in Han-
 172 cock, Brooke and Ohio counties area, \$50,-
 173 000.00; (l) construction of recreational facil-
 174 ities in Marshall, Wetzel, Tyler and Dodd-
 175 ridge Counties area, \$50,000.00; (m) Lost
 176 River State Park: for public toilet, \$5,000.00;
 177 for recreational building, \$16,800.00 \$ 296,200.00
 178 Item 24: Department of Education, for
 179 Stonewall Jackson Memorial Fund \$ 20,000.00
 180 In the event that the amount of surplus
 181 shall exceed the estimated \$6,742,430.00 em-
 182 bracing items 1 to 24, inclusive, the Board
 183 of Public Works shall from any excess over
 184 such estimated amount first release to Mar-
 185 shall College a sum not to exceed \$600,-
 186 000.00 for the purchase of land and improve-
 187 ments thereon; and, from any such excess
 188 still remaining, shall release an amount not
 189 to exceed \$250,000.00 to the State Tax Com-
 190 missioner for the purpose of Property Eval-
 191 uation; and, from such excess still remain-
 192 ing, shall release an amount not to exceed
 193 \$100,000.00 to the Department of Public
 194 Safety for construction of headquarters
 195 buildings in the Fourth and Fifth districts.

Sec. 6. *Reappropriations.*—The date for expiring the un-
2 expended balance, if any, in item 1 in the appropriations
3 made by and under authority of Sec. 4-A of the 1956
4 Budget Act, is extended to June 30, 1958 and is hereby
5 reappropriated to June 30, 1958. The sub-item (h) as
6 herein reappropriated may be expended for grading, bas-
7 ing, and paving of roads and parking area at Tomlinson
8 Run State Park.

9 The date for expiring the unexpended balance, if any,
10 in item 42, in the reappropriation made by and under au-
11 thority of Sec. 5 of the 1956 Budget Act is extended to
12 June 30, 1958 and is hereby reappropriated to June 30, 1958.

Sec. 7. *Special Revenue Appropriations.*—There is here-
2 by appropriated for expenditure during the fiscal year one
3 thousand nine hundred fifty-eight, appropriations made by
4 general law from special revenue which are not paid into
5 the state fund as general revenue under the provisions of
6 section two, article two, chapter twelve of the code of West
7 Virginia, one thousand nine hundred thirty-one: *Provided,*
8 *however,* That none of the moneys so appropriated by this
9 section shall be available for expenditure except in com-
10 pliance with and in conformity to the provisions of articles
11 two and three, of chapter twelve, code of West Virginia,
12 and chapter thirty-nine, acts of the Legislature, regular
13 session, one thousand nine hundred thirty-nine, and unless
14 the spending unit has filed with the state director of the
15 budget and the state auditor prior to the beginning of each
16 fiscal year:

17 (a) An estimate of the amount and sources of all reve-
18 nues accruing to such fund;

19 (b) A detailed expenditure schedule showing for what
20 purposes the fund is to be expended.

Sec. 8. *Specific Funds and Collection Accounts.*—A fund
2 or collection account, which by law is dedicated to a spe-
3 cific use, is hereby appropriated in sufficient amount to
4 meet all lawful demands upon the fund or collection ac-
5 count, and shall be expended according to the provisions

6 of article three, chapter twelve of the code of West Vir-
7 ginia, one thousand nine hundred thirty-one.

Sec. 9. *Appropriations for Refunding Erroneous Pay-*
2 *ments.*—Money that has been erroneously paid into the
3 state treasury is hereby appropriated out of the fund into
4 which it was paid for refund to the proper person.

5 When the officer authorized by law to collect money for
6 the state finds that a sum has been erroneously paid, he
7 shall issue his requisition upon the auditor for the refund-
8 ing of the proper amount. The auditor shall issue his war-
9 rant to the treasurer and the treasurer shall pay the war-
10 rant out of the fund into which the amount was originally
11 paid.

Sec. 10. *Sinking Fund Deficiencies.*—There is hereby ap-
2 propriated to the board of public works a sufficient amount
3 to meet a deficiency that may arise in the funds of the state
4 sinking fund commission because of the failure of any state
5 agency for either general obligation or revenue bonds or
6 any local taxing district for general obligation bonds to re-
7 mit funds necessary for the payment of interest and sink-
8 ing fund requirements. The board of public works is au-
9 thorized to transfer from time to time such amounts to the
10 state sinking fund commission as may be necessary for this
11 purpose.

12 The state sinking fund commission shall reimburse the
13 State of West Virginia through the board of public works
14 from the first remittance collected from any state agency
15 or local taxing district for which the board of public works
16 advanced funds, with interest at the rate carried by the
17 bonds for which the advance was made.

Sec. 11. *Appropriations from Taxes and License Fees.*—
2 There is hereby appropriated from the cigarette tax for ad-
3 ministration and enforcement of the law relating to said
4 tax a sum not to exceed one and one-half per cent of the
5 tax collected or stamps sold. There is hereby appropriated
6 from the soft drink tax revenues for administration and
7 enforcement of the law relating to said tax, a sum not to
8 exceed two and one-half per cent of the total revenues

9 collected. All such salaries and expenses, authorized by
10 law as aforesaid, shall be paid by the tax commissioner
11 through the state treasurer out of gross collections.

Sec. 12. *Appropriations to Pay Costs of Publication of
2 Delinquent Corporations.*—There is hereby appropriated
3 out of the state fund, general revenue, out of funds not
4 otherwise appropriated to be paid upon requisition of the
5 auditor and/or the governor, as the case may be, a sum
6 sufficient to pay the cost of publication of delinquent cor-
7 porations as provided by sections seventy-five and seventy-
8 seven of article twelve, chapter eleven, code of West Vir-
9 ginia.

Sec. 13. *Appropriations for Local Governments.*—There
2 is hereby appropriated for payment to counties, districts,
3 and municipal corporations such amounts as will be neces-
4 sary to pay taxes due county, district, and municipal cor-
5 porations and which have been paid into the treasury:

- 6 (a) For the redemption of lands;
- 7 (b) By public service corporations;
- 8 (c) For tax forfeitures.

Sec. 14. *Total Appropriation.*—Where only a total sum
2 is appropriated to a spending unit that total sum shall in-
3 clude personal services, current expenses, and capital out-
4 lay, except as otherwise provided in Title I, Section 3.

Sec. 15. *General School Fund.*—The balance of the pro-
2 ceeds of the general school fund remaining after the pay-
3 ment of the appropriations made by this act is appropri-
4 ated for expenditure in accordance with section six, ar-
5 ticle nine, chapter eighteen of the code of West Virginia,
6 one thousand nine hundred thirty-one, as amended.

Title 3. Administration.

Section

- 1. Appropriations conditional.
- 2. Constitutionality.

Section 1. *Appropriations Conditional.*—The expendi-
2 tures of the appropriations made by this act, except those
3 appropriations made to the legislative and judicial branch-

4 es of the state government, are conditioned upon the com-
5 pliance by the spending unit with the requirements of
6 article five, chapter five of the code of West Virginia, one
7 thousand nine hundred thirty-one, as amended by chapter
8 thirty-nine, acts of the Legislature, regular session, one
9 thousand nine hundred thirty-nine.

Sec. 2. *Constitutionality.*—If any part of this act is de-
2 clared unconstitutional by a court of competent jurisdic-
3 tion, its decision shall not affect any portion of this act
4 which remains, but the remaining portions shall be in full
5 force and effect as if the portion declared unconstitutional
6 had never been a part of the act.

CHAPTER 9

(House Bill No. 285—By Mr. Myles)

AN ACT to amend and reenact section three, article three, chap-
ter five of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, providing for the salaries
of assistant attorneys general.

[Passed March 8, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 3. Attorney General.

Section

3. Assistants to attorney general.

Be it enacted by the Legislature of West Virginia:

That section three, article three, chapter five of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:

Section 3. *Assistants to Attorney General.*—The attor-
2 ney general may appoint such assistant attorneys general
3 as may be necessary to properly perform the duties of his

4 office. One of such assistants shall be designated the first
5 assistant attorney general and shall receive a salary not
6 in excess of nine thousand dollars per annum, and each
7 of the other assistant attorneys general, including the
8 assistant attorney general appointed pursuant to section
9 one, article one, chapter eleven of this code, shall receive a
10 salary not in excess of eight thousand dollars per annum.
11 The total compensation of all such assistants shall be
12 within the limits of the amounts appropriated by the
13 Legislature for personal services. All assistant attorneys
14 general so appointed shall serve at the pleasure of the
15 attorney general and shall perform such duties as he may
16 require of them.

17 All laws or parts of laws inconsistent with the pro-
18 visions hereof are hereby amended to be in harmony with
19 the provisions of this section.

CHAPTER 10

(Senate Bill No. 255—By Mr. Traubert)

AN ACT to authorize the state auditor to transfer certain
obsolete balances now in four special revenue accounts
into the general fund.

[Passed March 7, 1957; in effect from passage. Approved by the Governor.]

Section

1. Authorized transfer of obsolete balances.

Be it enacted by the Legislature of West Virginia:

Section 1. *Authorized Transfer of Obsolete Balances.*—

- 2 The following balances of special revenue accounts are
3 carried on the state financial records as of December
4 thirty-one, one thousand nine hundred fifty-six; and,
5 since the following named institutions have been inte-
6 grated with other institutions, the state auditor is hereby

7 authorized and directed to transfer these balances, as
 8 follows: (a) student activities fund, school for colored
 9 deaf and blind, one thousand one hundred twenty-five
 10 dollars and thirteen cents, (b) farm sales account, indus-
 11 trial school for colored boys, fifty-five dollars and sixty-
 12 five cents, (c) farm sales account, industrial home for
 13 colored girls, three hundred sixteen dollars and ninety-
 14 three cents, and (d) farm sales account, West Virginia
 15 colored children's home, eighteen dollars and seventy-
 16 nine cents, into the general revenue fund.

CHAPTER 11

(Senate Bill No. 153—By Mr. Campbell and Mr. Carrigan)

AN ACT to amend and reenact sections seven and fourteen, article one-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to regulation and control of bedding and upholstery businesses.

[Passed February 28, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 1-a. Regulation and Control of Bedding and Upholstery Businesses.

Section

7. Requirements for Registration.
14. Registration; yearly fee.

Be it enacted by the Legislature of West Virginia:

That sections seven and fourteen, article one-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 7. *Registration Required.*—No person, firm
 2 or corporation shall sell or offer for sale any article of
 3 bedding or filling material, as defined in this article, in

4 the state of West Virginia, unless the person, firm or cor-
5 poration is registered and paid the registration fee as
6 defined in section fourteen of this article.

Sec. 14. *Annual Registration Fee.*—The annual regis-
2 tration fee for all manufacturers shipping or selling ar-
3 ticles of bedding, as defined in this article, in the state of
4 West Virginia, shall be fifty dollars, payable on the first
5 day of the fiscal year.

6 The annual registration fee for an upholsterer or reno-
7 vator of articles of bedding, as defined in this article, in
8 the state of West Virginia, shall be ten dollars, payable
9 on the first day of the fiscal year.

10 The annual registration fee for all dealers and retailers
11 of articles of bedding, as defined in this article, in the
12 state of West Virginia, shall be one dollar, payable on the
13 first day of the fiscal year.

CHAPTER 12

(Senate Bill No. 184—By Mr. Bean, Mr. President)

AN ACT to amend and reenact sections three, six, seven and eleven, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the board of control as to state institutions.

[Passed March 6, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 1. Organization; General Powers and Duties; Supervision of State Institutions.

Section

3. Institutions managed by board of control.
6. Title to property of state institutions; custody of deeds and other muniments of title.
7. Condemnation or sale of property.
11. Officers and employees of certain state institutions.

Be it enacted by the Legislature of West Virginia:

That sections three, six, seven and eleven, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. Institutions Managed by Board of Control.—

2 The state board of control shall manage, direct, control
3 and govern the West Virginia children's home, West Vir-
4 ginia home for aged and infirm colored men and women,
5 Andrew S. Rowan home, Hopemont sanitarium, Pinecrest
6 sanitarium, Rutherford sanitarium, Denmar sanitarium,
7 Berkeley Springs sanitarium, Welch emergency hospital,
8 Fairmont emergency hospital, West Virginia industrial
9 school for boys, West Virginia industrial home for girls,
10 West Virginia penitentiary, and such other state institu-
11 tions, other than mental or educational, as now are or
12 may hereafter be created by law.

Sec. 6. Title to Property of State Institutions; Custody

2 *of Deeds and Other Muniments of Title.—*The title to all
3 property constituting or belonging to the several institu-
4 tions named in sections three and four of this article shall
5 be vested in the state board of control. The board of control
6 shall be custodian of all deeds and other muniments of
7 title to all property owned by the state and shall cause
8 such as are susceptible of recordation to be recorded in
9 the proper offices.

*Sec. 7. Condemnation or Sale of Property.—*The state

2 board of control shall have power to acquire by condem-
3 nation land or buildings for the use and benefit of any of
4 the state institutions subject to its control and manage-
5 ment, and, by and with the consent of the governor, to
6 sell or exchange any property held by or for such institu-
7 tions. All condemnation proceedings had hereunder shall
8 be governed by chapter fifty-four of this code.

Sec. 11. Officers and Employees of Certain State In-

2 *stitutions.—*The governor shall, by and with the advice and
3 consent of the Senate, appoint a superintendent for the
4 West Virginia children's home, a superintendent for the

5 West Virginia home for aged and infirm colored men and
6 women, a superintendent for Hopemont sanitarium, a
7 superintendent for Denmar sanitarium, a superintendent
8 for Pinecrest sanitarium, a superintendent for Berkeley
9 Springs sanitarium, a superintendent for Welch emer-
10 gency hospital, a superintendent for Fairmont emergency
11 hospital, a superintendent for the West Virginia industrial
12 school for boys, a superintendent for the West Virginia
13 industrial home for girls, and a warden for the West Vir-
14 ginia penitentiary: *Provided, however,* That, as to the
15 institutions named in this section which are maintained
16 solely for members of the negro race, the executive officer
17 of such institutions, respectively, shall be a member of
18 such race. In the case of a hospital or sanitarium, or of
19 any institution the superintendent of which is required
20 by law to be a physician, the governor, before making
21 such appointment, shall request the public health council
22 to furnish a full and complete report concerning the
23 qualifications and suitability of the proposed appointee
24 for this position, and it shall be the duty of the public
25 health council to furnish such report.

26 The warden of the penitentiary and the superintendent
27 of each institution named in this section shall have the
28 power to appoint all assistants and employees required
29 for the management of the institution in his charge; but
30 the number of such assistants and employees, and their
31 compensation, shall first be fixed by the state board of
32 control. The warden of the penitentiary and the superin-
33 tendent of any institution may, at his pleasure, discharge
34 any person therein employed. It shall be the duty of the
35 board of control to investigate any complaint made
36 against the chief executive officer of any institution, and
37 also against any other officer or employee thereof, if the
38 same has not been investigated. The board shall have the
39 power to recommend to the governor the removal of any
40 such chief executive officer, or other officer or employee,
41 setting forth in such recommendation the reasons for the
42 same.

43 The board shall fix the salaries or compensation of the

44 officers and employees of the institutions named in sec-
45 tion three of this article. The salaries or compensation of
46 all officers and employees of the several institutions named
47 in sections three and four of this article shall be paid
48 monthly, to include the last day of each month. The chief
49 officer of each of the institutions named in section three
50 shall be furnished living quarters, household furniture,
51 board, fuel and light for himself and his family. Living
52 quarters, household furniture, board, fuel and light shall
53 be furnished to such other officers as is made necessary
54 by the character of their service, and the board of control
55 shall designate those who shall receive the foregoing in
56 addition to their salary.

CHAPTER 13

(House Bill No. 20—By Mr. Callaway)

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the auditor to issue warrants for the payment thereof.

[Passed March 9, 1957; in effect July 1, 1957. Approved by the Governor.]

Section

1. Finding and declaring certain claims against the West Virginia board of education, state tax commissioner and state road commission to be moral obligations of the state, and directing payment thereof.

Be it enacted by the Legislature of West Virginia:

- Section 1. *Finding and Declaring Certain Claims Against the West Virginia Board of Education, State Tax Commissioner and State Road Commission to Be Moral Obligations of the State, and Directing Payment Thereof.*—The Legislature has considered the findings of fact and recommendations reported to it by the attorney general concerning various claims against the state and agencies thereof,

8 and in respect to each of the following claims the Legisla-
 9 ture adopts those findings of fact as its own, and hereby
 10 declares it to be the moral obligation of the state to pay
 11 each such claim in the amount specified below, and directs
 12 the auditor to issue warrants for the payment thereof out
 13 of any fund appropriated and available for the purpose.

- 14 (a) Claims versus West Virginia Board of Education.
 15 (1) Eastern Greyhound Lines.....\$ 881.20
 16 (b) Claims versus State Road Commission.
 17 (1) Automobile Insurance Company of
 18 Hartford, Connecticut..... 12.24
 19 (2) Virginia Electric and Power Company.. 129.00
 20 (3) Freedom-Valvoline Oil Company..... 128.46
 21 (4) Security Trust Company..... 280.00
 22 (5) A. M. Mays..... 1,500.00
 23 (c) Claims versus State Tax Commissioner.
 24 (1) Reid-Boyce Tire and Tread Company.... 598.89

CHAPTER 14

(House Bill No. 418—By Mr. Speaker, Mr. Flannery)

AN ACT to amend and reenact section one, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, abolishing the West Virginia board of control and creating the office of state commissioner of public institutions in lieu thereof.

[Passed March 9, 1957; in effect July 1, 1957. Became a law without the approval of the Governor.]

Article 1. Supervision and Control of State Institutions.

Section

1. Commissioner of public institutions; term, salary, bond, duties and functions.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *Commissioner of Public Institutions; Term, Salary, Bond, Duties and Functions.*—The office of state commissioner of public institutions is hereby created. The commissioner shall have and is hereby granted all of the powers and authority and shall perform all of the functions and services vested in and performed by the West Virginia board of control which is hereby abolished. Wherever in this chapter or elsewhere in law reference is made to the West Virginia board of control such reference shall henceforth be construed and understood to mean the state commissioner of public institutions.

The commissioner shall be appointed by the governor, with the advice and consent of the Senate, for a term of six years. Any appointment to fill a vacancy shall be for the unexpired term. The commissioner shall devote his entire time to the duties of his office. He shall be paid a salary of ten thousand dollars per annum, payable monthly, and shall be paid actual traveling and other necessary expenses when absent from the capitol on official business. Offices and facilities for the commissioner shall be provided and maintained at the capitol.

The commissioner shall take and subscribe to the oath prescribed by the constitution for public officials and shall execute an official bond in a penalty of fifteen thousand dollars, conditioned as required by law. Premiums on such bond shall be paid from appropriations made for the commissioner's office. Such bond shall be approved as to form by the attorney general and as to sufficiency by the governor and, when fully executed and approved, shall be filed in the office of the secretary of state.

Nothing herein contained shall be construed so as to give the commissioner of public institutions any authority in the administration, management or control of mental institutions, heretofore transferred to the department of mental health by an act of the Legislature, regular session, one thousand nine hundred fifty-seven.

CHAPTER 15

(House Bill No. 314—By Mr. Moreland and Mr. Bachmann)

AN ACT to amend and reenact section fifteen, article three, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conditional sales contracts.

[Passed February 20, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 3. Conditional Sales.

Section

15. Injury, destruction, concealment, removal, encumbrance or sale.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article three, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 15. *Injury, Destruction, Concealment, Removal, Encumbrance or Sale.*—When, prior to the performance of the condition, the buyer, maliciously or with intent to defraud, shall injure, destroy or conceal the goods, or shall sell, mortgage or otherwise dispose of them under claim of full ownership, or maliciously or with intent to defraud shall remove them to another state or to a county in this state where the contract or a copy thereof is not filed, he shall be guilty of a misdemeanor, if the amount due on the goods so injured, destroyed, concealed, removed, mortgaged, sold or otherwise disposed of is less than fifty dollars, and, upon conviction thereof, shall be imprisoned in the county jail for not more than one year, or be fined not more than five hundred dollars, or both. Where the amount due on the goods thus injured, destroyed, concealed, removed, mortgaged, sold or otherwise disposed of is greater than fifty dollars, the buyer

18 shall be guilty of a felony and, upon conviction thereof,
19 shall be fined not less than one hundred nor more than
20 one thousand dollars, or be imprisoned in the penitentiary
21 for not less than one year nor more than five years, or
22 both, in the discretion of the court. When, prior to the
23 performance of the condition, the buyer, without having
24 given the notice required by section thirteen of this ar-
25 ticle, but without malice and without intent to defraud,
26 shall remove such goods to another state or to a county
27 in this state where the contract or a copy thereof is not
28 filed, he shall be guilty of a misdemeanor, and, upon con-
29 viction thereof, shall be imprisoned in the county jail for
30 not more than one year, or be fined not more than five
31 hundred dollars, or both. Any such removal without such
32 notice having been given shall be deemed prima facie
33 fraudulent.

CHAPTER 16

(Senate Bill No. 253—By Mr. Carrigan and Mr. Martin)

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, amending article ten thereof by adding thereto a new section, designated section one-a, relating to exemption of bank deposits and money from taxation.

[Passed March 5, 1957; in effect ninety days from passage. Approved by the Governor.]

Amendment to Exempt Bank Deposits and Money from Taxation.

Section

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "amendment to Exempt Bank Deposits and Money from Taxation."
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

Be it enacted by the Legislature of West Virginia:

Section 1. *Submitting an Amendment to the State Constitution.*—That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred fifty-eight, which proposed amendment is as follows:

That article ten of the constitution be amended by adding thereto a new section, designated section one-a, to read as follows:

“Section 1-a. Notwithstanding the provisions of the preceding section, bank deposits and money shall not be subject to ad valorem property taxation.”

Sec. 2. *Amendment to Be Known as the “amendment to Exempt Bank Deposits and Money from Taxation”.*—For convenience in referring to said proposed amendment, and in the preparation of the form of the ballot hereinafter provided for, said proposed amendment is hereby designated as the “Amendment to Exempt Bank Deposits and Money from Taxation”.

Sec. 3. *Form of Ballot; Election.*—For the purpose of enabling the voters of the state to vote on the question of said proposed amendment to the constitution at the said general election to be held in the year one thousand nine hundred fifty-eight, the board of ballot commissioners of each county is hereby required to place upon, and at the foot of, the official ballot to be voted at that election, the following:

“Ballot on ‘Amendment to Exempt Bank Deposits and Money from Taxation’.

For ratification of Amendment to Exempt Bank Deposits and Money from Taxation.

Against ratification of Amendment to Exempt Bank Deposits and Money from Taxation.”

The said election on the proposed amendment at each place of voting shall be superintended, conducted and returned, and the result thereof ascertained by the same

18 officers and in the same manner as the election of officers
 19 to be voted for at said election, and all the provisions of
 20 the law relating to general elections, including all duties
 21 to be performed by any officer or board, as far as practi-
 22 cable, and not inconsistent with anything herein con-
 23 tained, shall apply to the election held under the provi-
 24 sions of this act, except when it is herein otherwise pro-
 25 vided. The ballots cast on the question of said proposed
 26 amendment shall be counted as other ballots cast at said
 27 election.

Sec. 4. *Certificates of Election Commissioners; Canvass*
 2 of *Vote; Certifying Result.*—As soon as the result is
 3 ascertained, the commissioners, or a majority of them,
 4 and the canvassers (if there be any), or a majority of
 5 them, at each place of voting, shall make and sign two
 6 certificates thereof in the following form or to the follow-
 7 ing effect:

8 “We, the undersigned, who acted as commissioners (or
 9 canvassers, as the case may be) of the election held at
 10 Precinct No. _____, in the district of _____,
 11 in the county of _____, on the _____
 12 day of _____, one thousand nine hundred
 13 fifty-eight, upon the question of the ratification or rejec-
 14 tion of the proposed constitutional amendment, do hereby
 15 certify that the result of said election is as follows:

16 “For ratification of Amendment to Exempt Bank
 17 Deposits and Money from Taxation _____ votes.

18 “Against ratification of Amendment to Exempt Bank
 19 Deposits and Money from Taxation _____ votes.

20 “Given under our hands this _____ day of
 21 _____, one thousand nine hundred fifty-eight.”

22 The said two certificates shall correspond with each
 23 other in all respects and contain the full and true returns
 24 of said election at each place of voting on said question.
 25 The said commissioners, or any one of them (or said
 26 canvassers or any one of them, as the case may be), shall,
 27 within four days, excluding Sunday, after that on which
 28 said election was held, deliver one of said certificates to
 29 the clerk of the county court of his county, together with

30 the ballots, and the other to the clerk of the circuit court
31 of the county.

32 The certificates, together with the ballots cast on the
33 question of said proposed amendment, shall be laid be-
34 fore the commissioners of the county court at the court-
35 house at the same time the ballots, poll books, and the
36 certificates of election of the members of the Legislature
37 are laid before them; and as soon as the result of said
38 election in the county upon the question of such ratifica-
39 tion or rejection is ascertained, two certificates of such
40 result shall be made out and signed by said commission-
41 ers as a board of canvassers, in the form or to the follow-
42 ing effect:

43 "We, the board of canvassers of the county of
44, having carefully and impartially examined
45 the returns of the election held in said county, in each
46 district thereof, on the day of November,
47 one thousand nine hundred fifty-eight, do certify that the
48 results of the election in said county, on the question of
49 the ratification or rejection of the proposed amendment,
50 is as follows:

51 "For ratification of Amendment to Exempt Bank
52 Deposits and Money from Taxation votes.

53 "Against ratification of Amendment to Exempt Bank
54 Deposits and Money from Taxation votes.

55 "Given under our hands this day of
56, one thousand nine hundred fifty-eight."

57 One of the certificates shall be filed in the office of the
58 clerk of the county court, and the other forwarded by
59 mail to the secretary of state, who shall file and preserve
60 the same until the day on which the result of said elec-
61 tion in the state is to be ascertained, as hereinafter stated.

Sec. 5. Proclamation of Result of Election by Governor.

2 —On the twenty-fifth day after the election is held, or as
3 soon thereafter as practicable, the said certificates shall
4 be laid before the governor, whose duty it shall be to
5 ascertain therefrom the result of said election in the
6 state, and declare the same by proclamation published in
7 one or more newspapers printed at the seat of govern-
8 ment. If a majority of the votes cast at said election

9 upon said question be for ratification of said amendment,
 10 the proposed amendment so ratified shall be in force and
 11 effect from and after the time of such ratification, as part
 12 of the constitution of the state.

Sec. 6. *Publication of Proposed Amendment by Governor.*
 2 *nor.*—The governor shall cause the said proposed amend-
 3 ment, with the proper designation for the same as herein-
 4 before adopted, to be published one time at least three
 5 months before such election in some newspaper in every
 6 county in which a newspaper is printed, at a price to be
 7 agreed upon in advance, in writing, and the cost of such
 8 advertising in the first instance, if found necessary by him,
 9 be paid out of the governor's contingent fund and be af-
 10 terwards repaid to such fund by appropriation of the
 11 Legislature.

CHAPTER 17

(Senate Bill No. 312—By Mr. Traubert)

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, amending article ten thereof, by adding thereto a new section, designated section ten, relating to tax levies on property.

[Passed March 7, 1957; in effect ninety days from passage. Approved by the Governor.]

Better Schools Amendment.

Section

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "Better Schools Amendment."
3. Form of ballot election.
4. Certificates of election commissioners; canvass of votes; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

Be it enacted by the Legislature of West Virginia:

Section 1. *Submitting an Amendment to the State Constitution.*—That the question of the ratification or rejection

3 tion of an amendment to the constitution of West Vir-
4 ginia, proposed in accordance with the provisions of sec-
5 tion two, article fourteen of said constitution, shall be
6 submitted to the voters of the state at the next general
7 election, to be held in the year one thousand nine hundred
8 fifty-eight, which proposed amendment is as follows:

“Sec. 10. *Better Schools Amendment.*—Notwithstand-
2 ing any other provision of the constitution to the con-
3 trary, the maximum rates authorized and allocated by
4 law for tax levies on the several classes of property for
5 the support of public schools may be increased in any
6 school district for a period not to exceed five years, and
7 in an amount not to exceed one hundred per cent of such
8 maximum rates, if such increase is approved, in the man-
9 ner provided by law, by at least sixty per cent of the
10 qualified voters of the school district.

11 “Notwithstanding any other provision of the constitu-
12 tion to the contrary, the maximum rates provided for tax
13 levies by school districts on the several classes of property
14 may be used entirely for current expense purposes; and
15 all levies required for principal and interest payments on
16 any bonded indebtedness, now or hereafter contracted, not
17 to exceed five per centum on the value of the taxable
18 property therein, the value to be ascertained in accord-
19 ance with section eight of this article, shall be laid separ-
20 ate and apart and in addition to such maximum rates, but
21 in the same proportions as such maximum rates are levied
22 on the several classes of property.”

Sec. 2. *Amendment to Be Known as the “Better
2 Schools Amendment”.*—For convenience in referring to
3 said proposed amendment, and in the preparation of the
4 form of the ballot hereinafter provided for, said proposed
5 amendment is hereby designated as the “Better Schools
6 Amendment”.

Sec. 3. *Form of Ballot Election.*—For the purpose of
2 enabling the voters of the state to vote on the question of
3 said proposed amendment to the constitution at the said
4 general election to be held in the year one thousand nine
5 hundred fifty-eight, the board of ballot commissioners of

6 each county is hereby required to place upon, and at the
7 foot of, the official ballot to be voted at the election, the
8 following:

9 "Ballot on 'Better Schools Amendment'.

10 " For ratification of Better Schools Amendment.

11 " Against ratification of Better Schools Amendment."

12 The said election on the proposed amendment at each
13 place of voting shall be superintended, conducted and re-
14 turned, and the result thereof ascertained by the same
15 officers and in the same manner as the election of officers
16 to be voted for at said election, and all the provisions of
17 the law relating to general elections, including all duties
18 to be performed by any officer or board, as far as prac-
19 ticable, and not inconsistent with anything herein con-
20 tained, shall apply to the election held under the pro-
21 visions of this act, except when it is herein otherwise pro-
22 vided. The ballots cast on the question of said proposed
23 amendment shall be counted as other ballots cast at said
24 election.

2 *Sec. 4. Certificates of Election Commissioners; Can-*
3 *vass of Vote; Certifying Result.*—As soon as the result is
4 ascertained, the commissioners, or a majority of them,
5 and the canvassers (if there be any), or a majority of
6 them, at each place of voting, shall make out and sign
7 two certificates thereof in the following form or to the fol-
8 lowing effect:

8 "We, the undersigned, who acted as commissioners (or
9 canvassers, as the case may be) of the election held at
10 Precinct No., in the district of,
11 in the county of, on the fourth day of
12 November, one thousand nine hundred fifty-eight, upon
13 the question of the ratification or rejection of the pro-
14 posed constitutional amendment, do hereby certify that
15 the result of said election is as follows:

16 "For ratification of Better Schools Amendment

17 votes.

18 "Against ratification of Better Schools Amendment

19 votes.

20 "Given under our hands this day of November,
21 one thousand nine hundred fifty-eight."

22 The said two certificates shall correspond with each
23 other in all respects and contain the full and true returns
24 of said election at each place of voting on said question.
25 The said commissioners, or any one of them (or said can-
26 vassers or any one of them, as the case may be), shall,
27 within four days, excluding Sunday, after that on which
28 said election was held, deliver one of said certificates to
29 the clerk of the county court of his county, together with
30 the ballots, and the other to the clerk of the circuit court
31 of the county.

32 The said certificates, together with the ballots cast on
33 the question of said proposed amendment, shall be laid
34 before the commissioners of the county court at the court-
35 house at the same time the ballots, poll books, and the
36 certificates of election of the members of the Legislature
37 are laid before them; and as soon as the result of said
38 election in the county upon the question of such ratifica-
39 tion or rejection is ascertained, two certificates of such re-
40 sult shall be made out and signed by said commissioners
41 as a board of canvassers, in the form or to the following
42 effect:

43 "We, the board of canvassers of the county of
44, having carefully and impartially examined the re-
45 turns of the election held in said county, in each district
46 thereof, on the fourth day of November, one thousand
47 nine hundred fifty-eight, do certify that the results of the
48 election in said county, on the question of the ratification
49 or rejection of the proposed amendment is as follows:

50 "For ratification of Better Schools Amendment
51 votes.

52 "Against ratification of Better Schools Amendment
53 votes.

54 "Given under our hands this day of November,
55 one thousand nine hundred fifty-eight."

56 One of the certificates shall be filed in the office of the
57 clerk of the county court, and the other forwarded by
58 mail to the secretary of state, who shall file and preserve

59 the same until the day on which the result of said election
60 in the state is to be ascertained, as hereinafter stated.

Sec. 5. *Proclamation of Result of Election by Governor.*—On the twenty-fifth day after the election is held, or as soon thereafter as practicable, the said certificates shall be laid before the governor, whose duty it shall be to ascertain therefrom the result of said election in the state, and declare the same by proclamation published in one or more newspapers printed at the seat of government. If a majority of the votes cast at said election upon said question be for ratification of said amendment, the proposed amendment so ratified shall be in force and effect, from and after the time of such ratification, as part of the constitution of the state.

Sec. 6. *Publication of Proposed Amendment by Governor.*—The governor shall cause the said proposed amendment, with the proper designation for the same as hereinbefore adopted, to be published one time at least three months before such election in some newspaper in every county in which a newspaper is printed, at a price to be agreed upon in advance, in writing, and the cost of such advertising shall in the first instance, if found necessary by him, be paid out of the governor's contingent fund and be afterwards repaid to such fund by appropriation of the Legislature.

CHAPTER 18

(Senate Bill No. 251—By Mr. Martin)

AN ACT to provide for the submission to the voters of the state of an amendment to the constitution of the state, amending section four of article eleven thereof, relating to corporate stock and the rights of stockholders of corporations to vote for directors or managers.

[Passed March 7, 1957; in effect ninety days from passage. Approved by the Governor.]

Corporation Stock Voting Amendment.**Section**

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "Corporation Stock Voting Amendment."
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

Be it enacted by the Legislature of West Virginia:

Section 1. *Submitting an Amendment to the State Constitution.*—That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred fifty-eight, which proposed amendment is as follows:

Article 11. Corporations.

"Section 4. *Rights of Stockholders.*—The Legislature shall provide by law that every corporation, other than a banking institution, shall have power to issue one or more classes and series within classes of stock, with or without par value, with full, limited or no voting powers, and with preferences and special rights and qualifications, and that in all elections for directors or managers of incorporated companies, every stockholder holding stock having the right to vote for directors, shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock, shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner."

Sec. 2. *Amendment to Be Known as the "Corporation Stock Voting Amendment"*.—For convenience in referring to said proposed amendment, and in the prepara-

4 tion of the form of the ballot hereinafter provided for,
5 said proposed amendment is hereby designated as the
6 "Corporation Stock Voting Amendment".

2 Sec. 3. *Form of Ballot; Election.*—For the purpose of
3 enabling the voters of the state to vote on the question of
4 said proposed amendment to the constitution at the said
5 general election to be held in the year one thousand nine
6 hundred fifty-eight, the board of ballot commissioners of
7 each county is hereby required to place upon, and at the
8 foot of, the official ballot to be voted at the election, the
9 following:

9 "Ballot on 'Corporation Stock Voting Amendment'.

10 " For ratification of Corporation Stock Voting
11 Amendment.

12 " Against ratification of Corporation Stock Voting
13 Amendment."

14 The said election on the proposed amendment at each
15 place of voting shall be superintended, conducted and re-
16 turned, and the result thereof ascertained by the same
17 officers and in the same manner as the election of officers
18 to be voted for at said election, and all the provisions of
19 the law relating to general elections, including all duties
20 to be performed by any officer or board, as far as practi-
21 cable, and not inconsistent with anything herein con-
22 tained, shall apply to the election held under the provi-
23 sions of this act, except when it is herein otherwise pro-
24 vided. The ballots cast on the question of said proposed
25 amendment shall be counted as other ballots cast at said
26 election.

2 Sec. 4. *Certificates of Election Commissioners; Canvass*
3 *of Vote; Certifying Result.*—As soon as the result is
4 ascertained, the commissioners, or a majority of them,
5 and the canvassers (if there be any), or a majority of
6 them, at each place of voting, shall make out and sign
7 two certificates thereof in the following form or to the fol-
8 lowing effect:

8 "We, the undersigned, who acted as commissioners (or
9 canvassers, as the case may be) of the election held at
10 Precinct No. _____, in the district of _____,
11 in the county of _____, on the fourth day

12 of November, one thousand nine hundred fifty-eight,
13 upon the question of the ratification or rejection of the
14 proposed constitutional amendment, do hereby certify
15 that the result of said election is as follows:

16 "For ratification of Corporation Stock Voting Amend-
17 ment votes.

18 "Against ratification of Corporation Stock Voting
19 Amendment votes.

20 "Given under our hands this day of November,
21 one thousand nine hundred fifty-eight."

22 The said two certificates shall correspond with each
23 other in all respects and contain the full and true returns
24 of said election at each place of voting on said question.
25 The said commissioners, or any one of them (or said
26 canvassers or any one of them, as the case may be), shall,
27 within four days, excluding Sunday, after that on which
28 said election was held, deliver one of said certificates to
29 the clerk of the county court of his county, together with
30 the ballots, and the other to the clerk of the circuit court
31 of the county.

32 The said certificates, together with the ballots cast on
33 the question of said proposed amendment, shall be laid
34 before the commissioners of the county court at the court-
35 house at the same time the ballots, poll books, and the
36 certificates of election of the members of the Legislature
37 are laid before them; and as soon as the result of said
38 election in the county upon the question of such ratifica-
39 tion or rejection is ascertained, two certificates of such
40 result shall be made out and signed by said commission-
41 ers as a board of canvassers, in the form or to the follow-
42 ing effect:

43 "We, the board of canvassers of the county of
44, having carefully and impartially examined
45 the returns of the election held in said county, in each
46 district thereof, on the fourth day of November, one
47 thousand nine hundred fifty-eight, do certify that the re-
48 sults of the election in said county, on the question of the
49 ratification or rejection of the proposed amendment is as
50 follows:

51 "For ratification of Corporation Stock Voting Amend-
52 ment votes.

53 "Against ratification of Corporation Stock Voting
54 Amendment votes.

55 "Given under our hands this day of November,
56 one thousand nine hundred fifty-eight."

57 One of the certificates shall be filed in the office of the
58 clerk of the county court, and the other forwarded by
59 mail to the secretary of state, who shall file and preserve
60 the same until the day on which the result of said election
61 in the state is to be ascertained, as hereinafter stated.

Sec. 5. *Proclamation of Result of Election by Governor.*

2 —On the twenty-fifth day after the election is held, or as
3 soon thereafter as practicable, the said certificates shall
4 be laid before the governor, whose duty it shall be to
5 ascertain therefrom the result of said election in the state,
6 and declare the same by proclamation published in one
7 or more newspapers printed at the seat of government.
8 If a majority of the votes cast at said election upon said
9 question be for ratification of said amendment, the pro-
10 posed amendment so ratified shall be in force and effect,
11 from and after the time of such ratification, as part of the
12 constitution of the state.

Sec. 6. *Publication of Proposed Amendment by Gov-*

2 *ernor.*—The governor shall cause the said proposed
3 amendment, with the proper designation for the same as
4 hereinbefore adopted, to be published one time at least
5 three months before such election in some newspaper in
6 every county in which a newspaper is printed, at a price
7 to be agreed upon in advance, in writing, and the cost of
8 such advertising shall in the first instance, if found neces-
9 sary by him, be paid out of the governor's contingent
10 fund and be afterwards repaid to such fund by appropria-
11 tion of the Legislature.

CHAPTER 19

(Senate Bill No. 252—By Mr. Taylor and Mr. Bowers)

AN ACT to provide for the submission to the voters of the state
of an amendment to the constitution of the state, amending

sections one, two and seventeen of article seven thereof, and section two of article twelve thereof, all relating to the state superintendent of free schools.

[Passed March 6, 1957; in effect ninety days from passage. Approved by the Governor.]

State Superintendent of Free Schools Amendment.

Section

1. Submitting an amendment to the state constitution.
2. Amendment to be known as the "State Superintendent of Free Schools Amendment."
3. Form of ballot; election.
4. Certificates of election commissioners; canvass of vote; certifying result.
5. Proclamation of result of election by governor.
6. Publication of proposed amendment by governor.

Be it enacted by the Legislature of West Virginia:

Section 1. *Submitting an Amendment to the State Constitution.*— That the question of the ratification or rejection of an amendment to the constitution of West Virginia, proposed in accordance with the provisions of section two, article fourteen of said constitution, shall be submitted to the voters of the state at the next general election, to be held in the year one thousand nine hundred fifty-eight, which proposed amendment is as follows:

Article 7. Executive Department.

"Section 1. *Executive Department.*—The executive department shall consist of a governor, secretary of state, auditor, treasurer, commissioner of agriculture and attorney general, who shall be, ex officio, reporter of the court of appeals. Their terms of office shall be four years and shall commence on the first Monday after the second Wednesday of January next after their election. They shall reside at the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices and shall perform such duties as may be prescribed by law.

“Sec. 2. *Election.*—An election for governor, secretary of state, auditor, treasurer, commissioner of agriculture and attorney general shall be held at such times and places as may be prescribed by law.

“Sec. 17. *Vacancies in Other Executive Departments.*— If the office of secretary of state, auditor, treasurer, commissioner of agriculture or attorney general shall become vacant by death, resignation, or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be prescribed by law. The subordinate officers of the executive department and the officers of all public institutions of the state shall keep an account of all moneys received or disbursed by them, respectively, from all sources and for every service performed, and make a semi-annual report thereof to the governor under oath or affirmation; and any officer who shall wilfully make a false report shall be deemed guilty of perjury.

Article 12. Education.

“Section 2. *Supervision of Free Schools.*—The general supervision of the free schools of the state shall be vested in the West Virginia board of education which shall perform such duties as may be prescribed by law. The board shall consist of nine members to be appointed by the governor, by and with the advice and consent of the Senate, for overlapping terms of nine years, except that the original appointments shall be for terms of one, two, three, four, five, six, seven, eight and nine years, respectively. No more than five members of the board shall belong to the same political party, and in addition to the general qualifications otherwise required by the constitution, the Legislature may require other specific qualifications for membership on the board. No member of the board may be removed from office by the governor except for official misconduct, incompetence, neglect of duty, or gross immorality, and then only in the manner prescribed by law for the removal by the governor of state elective officers.

20 "The West Virginia board of education shall, in the
21 manner prescribed by law, select the state superintendent
22 of free schools who shall serve at its will and pleasure. He
23 shall be the chief school officer of the state and shall have
24 such powers and shall perform such duties as may be
25 prescribed by law.

26 "The state superintendent of free schools shall be a
27 member of the board of public works as provided by
28 subsection B, section fifty-one, article six of this con-
29 stitution."

Sec. 2. *Amendment to Be Known as the "State Super-
2 intendent of Free Schools Amendment"*.—For conven-
3 ience in referring to said proposed amendment, and in the
4 preparation of the form of the ballot hereinafter pro-
5 vided for, said proposed amendment is hereby designated
6 as the "State Superintendent of Free Schools Amend-
7 ment".

Sec. 3. *Form of Ballot; Election*.—For the purpose of
2 enabling the voters of the state to vote on the question of
3 said proposed amendment to the constitution at the said
4 general election to be held in the year one thousand nine
5 hundred fifty-eight, the board of ballot commissioners of
6 each county is hereby required to place upon, and at the
7 foot of, the official ballot to be voted at that election, the
8 following:

9 "Ballot on 'State Superintendent of Free Schools
10 Amendment'.

11 " For ratification of 'State Superintendent of Free
12 Schools Amendment'.

13 " Against ratification of 'State Superintendent of
14 Free Schools Amendment'."

15 The said election on the proposed amendment at each
16 place of voting shall be superintended, conducted and re-
17 turned, and the result thereof ascertained by the same
18 officers and in the same manner as the election of officers
19 to be voted for at said election, and all the provisions of
20 the law relating to general elections, including all duties
21 to be performed by any officer or board, as far as practic-
22 able, and not inconsistent with anything herein contained,

23 shall apply to the election held under the provisions of
 24 this act, except when it is herein otherwise provided. The
 25 ballots cast on the question of said proposed amendment
 26 shall be counted as other ballots cast at said election.

Sec. 4. *Certificates of Election Commissioners; Canvass
 2 of Vote; Certifying Result.*—As soon as the result is as-
 3 certained, the commissioners, or a majority of them, and
 4 the canvassers (if there be any), or a majority of them,
 5 at each place of voting, shall make out and sign two cer-
 6 tificates thereof in the following form or the following
 7 effect:

8 “We, the undersigned, who acted as commissioners (or
 9 canvassers, as the case may be) of the election held at
 10 Precinct No....., in the district of.....,
 11 in the county of....., on the fourth day
 12 of November, one thousand nine hundred fifty-eight, upon
 13 the question of the ratification or rejection of the pro-
 14 posed constitutional amendment, do hereby certify that
 15 the result of said election is as follows:

16 “For ratification of State Superintendent of Free
 17 Schools Amendment.....votes.

18 “Against ratification of State Superintendent of Free
 19 Schools Amendment.....votes.

20 “Given under our hands this..... day of
 21 November, one thousand nine hundred fifty-eight.”

22 The said two certificates shall correspond with each
 23 other in all respects and contain the full and true returns
 24 of said election at each place of voting on said question.
 25 The said commissioners, or any one of them (or said can-
 26 vassers or any one of them, as the case may be), shall,
 27 within four days, excluding Sunday, after that on which
 28 said election was held, deliver one of said certificates to
 29 the clerk of the county court of his county, together with
 30 the ballots, and the other to the clerk of the circuit court
 31 of the county.

32 The said certificates, together with the ballots cast on
 33 the question of said proposed amendment, shall be laid
 34 before the commissioners of the county court at the court-
 35 house at the same time the ballots, poll books, and the

36 certificates of election of the members of the Legislature
 37 are laid before them; and as soon as the result of said
 38 election in the county upon the question of such ratifica-
 39 tion or rejection is ascertained, two certificates of such
 40 result shall be made out and signed by said commission-
 41 ers as a board of canvassers, in the form or to the fol-
 42 lowing effect:

43 "We, the board of canvassers of the county of.....
 44, having carefully and impartially ex-
 45 amined the returns of the election held in said county, in
 46 each district thereof, on the fourth day of November,
 47 one thousand nine hundred fifty-eight, do certify that the
 48 results of the election in said county, on the question of
 49 the ratification or rejection of the proposed amendment
 50 is as follows:

51 "For ratification of State Superintendent of Free
 52 Schools Amendment.....votes.

53 "Against ratification of State Superintendent of Free
 54 Schools Amendment.....votes.

55 "Given under our hands this day of
 56 November, one thousand nine hundred fifty-eight."

57 One of the certificates shall be filed in the office of the
 58 clerk of the county court, and the other forwarded by mail
 59 to the secretary of state, who shall file and preserve the
 60 same until the day on which the result of said election
 61 in the state is to be ascertained, as hereinafter stated.

Sec. 5. Proclamation of Result of Election by Governor.

2 —On the twenty-fifth day after the election is held, or as
 3 soon thereafter as practicable, the said certificates shall
 4 be laid before the governor, whose duty it shall be to
 5 ascertain therefrom the result of said election in the
 6 state, and declare the same by proclamation published
 7 in one or more newspapers printed at the seat of govern-
 8 ment. If a majority of the votes cast at said election upon
 9 said question be for ratification of said amendment, the
 10 proposed amendment so ratified shall be in force and
 11 effect, from and after the time of such ratification, as part
 12 of the constitution of the state.

Sec. 6. Publication of Proposed Amendment by Gov-

2 *error.*—The governor shall cause the said proposed
3 amendment, with the proper designation for the same as
4 hereinbefore adopted, to be published one time at least
5 three months before such election in some newspaper in
6 every county in which a newspaper is printed, at a price
7 to be agreed upon in advance, in writing, and the cost
8 of such advertising shall in the first instance, if found
9 necessary by him, be paid out of the governor's contingent
10 fund and be afterwards repaid to such fund by appropria-
11 tion of the Legislature.

CHAPTER 20

(Senate Bill No. 179—By Mr. Martin)

AN ACT to amend and reenact section seventy-one, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the designation of a state official, in some cases the auditor and in other cases the secretary of state, as attorney in fact for all corporations created by virtue of the laws of the state of West Virginia and for all foreign corporations doing business in the state of West Virginia, whether or not authorized to do business herein, with authority to accept service of notices and process on behalf of such corporations and upon whom service of notice and process may be made in this state for and upon every such corporation in suits or proceedings instituted against such corporations; and prescribing what constitutes doing business by a non-authorized foreign corporation for purposes of serving notices and process upon the auditor and the acceptance thereof by the auditor on behalf of such corporation.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 1. Provisions Relating to Corporations Generally.

Section

71. Auditor attorney in fact for all corporations; manner of service of notices and process upon auditor and the acceptance thereof;

what constitutes doing business in this state for purposes of this section; purposes for which secretary of state constituted such attorney in fact.

Be it enacted by the Legislature of West Virginia:

That section seventy-one, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 71. *Auditor Attorney in Fact for All Corporations; Manner of Service of Notices and Process Upon Auditor and the Acceptance Thereof; What Constitutes Doing Business in This State for Purposes of This Section; Purposes for Which Secretary of State Constituted Such Attorney in Fact.*—The auditor of this state is hereby constituted the attorney in fact for and on behalf of every corporation created by virtue of the laws of this state and every foreign corporation authorized to do business herein pursuant to the provisions of section seventy-nine of this article, with authority to accept service of notice and process on behalf of and upon whom service of notice and process may be made in this state for and upon every such corporation. No act of such corporation appointing the auditor such attorney in fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the auditor with the original notice or process, the auditor shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service, or acceptance, as the case may be, and transmit one copy of such process or notice by registered mail to such corporation at the address last furnished by it, as required by law. But no process or notice shall be served on the auditor or accepted by him less than ten days before the return day thereof. Such corporation shall pay the annual fee prescribed in article twelve, chapter eleven of this code for the services of the auditor as its attorney in fact.

Any foreign corporation which shall do any business in this state without having been authorized so to do pursuant to the provisions of section seventy-nine

34 of this article shall be conclusively presumed to have
35 appointed the auditor of the state as its attorney in fact
36 with authority to accept service of notice and process on
37 behalf of and upon whom service of notice and process
38 may be made in this state for and upon every such cor-
39 poration in any action or proceeding described in the
40 next following paragraph of this section. No act of such
41 corporation appointing the auditor such attorney in fact
42 shall be necessary. Immediately after being served with
43 or accepting any such process or notice, of which process
44 or notice two copies for each defendant shall be furnished
45 the auditor with the original notice or process, together
46 with a fee of two dollars, the auditor shall file in his
47 office a copy of such process or notice, with a note thereon
48 endorsed of the time of service or acceptance, as the case
49 may be, and transmit one copy of such process or notice
50 by registered mail, return receipt requested, to such cor-
51 poration at the address of its principal place of business,
52 which address shall be stated in such process or notice.
53 Such service or acceptance of such process or notice shall
54 be sufficient: *Provided*, That such return receipt shall be
55 signed by an agent or employee of such corporation, or
56 the registered mail so sent by said auditor is refused by
57 the addressee and the registered mail is returned to said
58 auditor, or to his office, showing thereon the stamp of the
59 post office department that delivery thereof has been re-
60 fused, and such return receipt or registered mail is ap-
61 pended to the original process or notice and filed there-
62 with in the clerk's office of the court from which such
63 process or notice was issued. But no such process or no-
64 tice shall be served on the auditor or accepted by him
65 less than ten days before the return date thereof. The
66 court may order such continuances as may be reasonable
67 to afford each defendant opportunity to defend the action
68 or proceeding.

69 For the purposes of this section, a foreign corporation
70 not authorized to do business in this state pursuant to
71 the provisions of section seventy-nine of this article shall
72 nevertheless be deemed to be doing business herein if
73 such corporation makes a contract to be performed, in
74 whole or in part, by any party thereto, in this state, or

75 if such corporation commits a tort in whole or in part in
76 this state. The making of such contract or the committing
77 of such tort shall be deemed to be the agreement of such
78 corporation that any notice or process served upon, or
79 accepted by, the auditor pursuant to the next preceding
80 paragraph of this section in any action or proceeding
81 against such corporation arising from, or growing out of,
82 such contract or such tort shall be of the same legal force
83 and validity as process duly served on such corporation
84 in this state.

85 For the purpose of all suits or proceedings instituted
86 for the collection of license taxes due the state, pursuant
87 to the provisions of section eighty-six, article twelve,
88 chapter eleven of this code, as amended, and for the pur-
89 pose of all other cases where it is the duty of the auditor
90 to collect a debt or claim due the state from corporations,
91 the secretary of state, in lieu of the auditor, is hereby
92 constituted the attorney in fact for such corporations. No
93 act of any such corporation appointing the secretary of
94 state such attorney in fact shall be necessary. All pro-
95 visions in this section relating to the service of process
96 on, or acceptance of process by, the auditor, and the duties
97 imposed upon the auditor, shall apply to the secretary of
98 state in such cases.

CHAPTER 21

(Senate Bill No. 142—By Mr. Martin)

AN ACT to amend article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventy-nine-a, providing for special conditions to be met by foreign corporations whose sole activities within this state are the acquisition by purchase of loans secured by liens on real estate located within this state, and all acts incidental and necessary thereto.

Article 1. Provisions Relating to Corporations Generally.**Section****79-a. Foreign corporations; activities permitted, filing and fees.**

Be it enacted by the Legislature of West Virginia:

That article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seventy-nine-a, to read as follows:

Section 79-a. *Foreign Corporations; Activities Permitted, Filing and Fees.*—The provisions of section seventy-nine of this article shall not be applicable to, nor affect, any foreign corporation heretofore, or hereafter doing business in this state within the meaning of this section or any other statute, including but not limited to, chapter thirty-three of this code, by reason of carrying on in this state any one or more of the following activities: (a) The acquisition by purchase of loans secured by mortgages or deeds of trust, drawn and executed in compliance with chapter thirty-eight, article one-a, section two, of this code on property situated in West Virginia pursuant to commitment agreements or arrangements made prior to or following the origination or creation of said loans; (b) the ownership, modification, renewal, extension, transfer or foreclosure of such loans, or the acceptance of substitute or additional obligors thereon; (c) the maintaining or defending of any actions or suits relative to such loans, mortgages or deeds of trust; (d) the maintenance of bank accounts in West Virginia banks in connection with the collection or servicing of such loans; (e) the making, collection and servicing of such loans through a West Virginia concern engaged in the business of servicing real estate loans for the investors; (f) the taking of deeds to the mortgaged property either in lieu of foreclosure or for the purpose of transferring title either to the federal housing administration or to the veterans administration as the insurer or guarantor; (g) the acquisition of title to property under foreclosure sale or from the owner in lieu of foreclosure; (h) the management, rental, maintenance and

32 sale, or the operating, maintaining, renting or otherwise
33 dealing with, selling or disposing of real property ac-
34 quired under foreclosure sale or by agreement in lieu
35 thereof; and (i) the physical inspection and appraisal of
36 property in West Virginia as security for deeds of trust
37 or mortgages and negotiations for the purchase of such
38 loans: *Provided, however,* That if property acquired in
39 or by reason of any of the activities defined in the pro-
40 visions of (f), (g) and (h) hereof shall be held longer
41 than a period of one year, the provisions of this section
42 shall be inapplicable. Such foreign corporations shall file
43 with the secretary of state a certificate showing the name
44 and address of the corporation, the name of the state
45 wherein the corporation was chartered and including
46 therewith a certified copy of its articles of association or
47 incorporation, including all amendments thereto, and
48 shall pay a filing fee of fifty dollars. The corporation
49 shall likewise file with the secretary of state a certified
50 copy of all amendments subsequently made to its articles
51 of association or incorporation within six months from the
52 date of any such amendment, and failure to file any such
53 amendment shall subject such corporation to a fine of not
54 more than one thousand dollars. The provisions of section
55 seventy-one of this article relating to service of process
56 on foreign corporations shall be applicable to the foreign
57 corporations mentioned in this section.

CHAPTER 22

(House Bill No. 377—By Mr. Lile, by request)

AN ACT to amend and reenact section eighty-three, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the effect of dissolution or expirations of corporations.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 1. Provisions Relating to Corporations Generally.**Section**

83. Effect of dissolution or expiration.

Be it enacted by the Legislature of West Virginia:

That section eighty-three, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 83. *Effect of Dissolution or Expiration.*—When
2 a corporation shall expire or be dissolved as prescribed
3 in this article, (or its charter be forfeited pursuant to
4 section eighty-six, article twelve, chapter eleven of this
5 code), its property and assets shall be subject to the pay-
6 ment of the corporate obligations and the expenses of
7 winding up its affairs, and the surplus, if any, to distri-
8 bution among the stockholders according to their re-
9 spective rights. The board of directors and the execu-
10 tive officers in office at the date of such expiration
11 or dissolution, and their successors in office, shall have
12 the right to fill any vacancy in any executive office
13 and of the board of directors by appointment; and
14 they and their successors in office may cause suits
15 to be brought, conducted, prosecuted or defended, the
16 real and personal property of the corporation to be con-
17 veyed or transferred under the common seal or other-
18 wise, further assurances of previous conveyances to be
19 made, and all lawful acts to be done, in the corporate
20 name, in like manner and with like effect as before such
21 dissolution or expiration; but so far only as shall be neces-
22 sary or proper to do and perform every act and thing
23 which should have been or should be done and performed
24 by the corporation, and for collecting the debts and claims
25 due to the corporation, converting its property and assets
26 into money, prosecuting, defending and protecting its
27 rights, enforcing all claims in its favor, and paying over
28 and distributing its property and assets, or the proceeds
29 thereof, to those entitled thereto.

CHAPTER 23

(Com. Sub. for House Bill No. 144—Originating in the
House Committee on Banking)

AN ACT to amend article eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five-a, relating to the closing of banking institutions on any one fixed week-day or portion thereof at the discretion of the board of directors; prescribing procedure to be followed in fixing such day; and declaring such day a legal holiday for such banks and bank transactions.

[Passed February 27, 1957; in effect ninety days from passage. Approved by the
Governor.]

Article 8. Business Operations and Supervision of Banking Institutions, Industrial Loan Companies and Building and Loan Associations.

Section

25-a. Permissive closing on fixed week-day; procedure.

Be it enacted by the Legislature of West Virginia:

That article eight, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-five-a, to read as follows:

Section 25-a. *Permissive Closing on Fixed Week-Day;*
2 *Procedure.*—Any banking institution or trust company in
3 this state, or combined banking institution and trust com-
4 pany, including national banking associations, may re-
5 main closed on any one fixed week-day or portion of such
6 day in each calendar week, other than Sunday, which
7 may be designated by the adoption of a resolution by the
8 board of directors thereof. Not less than fifteen nor more
9 than thirty days in advance of closing of any such week-
10 day or portion thereof, such banking institution shall post

11 a notice in a conspicuous place in its banking room stating
12 that on or after a day certain and until further notice
13 given in like manner, such banking institution will re-
14 main closed on a fixed week-day or portion thereof. Con-
15 currently with the posting of such notice, such banking
16 institution shall cause a notice to be published once each
17 week for two successive weeks in a newspaper of general
18 circulation in the county in which the principal office of
19 such bank is located, which notice shall set forth the
20 week-day or portion thereof on which said bank will re-
21 main closed and the date when such closing becomes effec-
22 tive. A certified copy of such resolution certified by the
23 cashier or secretary of such banking institution, together
24 with an affidavit of posting and proof of publication of
25 the notice herein required shall be filed with the com-
26 missioner of banking.

27 Any fixed week-day or portion thereof on which any
28 banking institution shall elect to close pursuant to the
29 authority of this section shall constitute a legal holiday
30 or partial legal holiday with respect to such banking insti-
31 tution and not a business day for the purposes of the law
32 relating to negotiable instruments, and any act or contract
33 authorized, required or permitted to be carried out or
34 performed at, by or with respect to such banking institu-
35 tion may be performed on the next business day, and no
36 liability or loss of rights on the part of any person or
37 banking institution shall result therefrom.

CHAPTER 24

(Senate Bill No. 208—By Mr. Martin)

AN ACT to amend and reenact section ten, article two, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the bonds of county officers.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 2. Official and Other Bonds.

Section

10. Of county officers.

Be it enacted by the Legislature of West Virginia:

That section ten, article two, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 10. *Of County Officers.*—Every commissioner
2 of a county court and every clerk of a circuit court shall
3 give bond with good security, to be approved by the cir-
4 cuit court, or the judge thereof in vacation; and every
5 sheriff, surveyor of lands, clerk of a county court, asses-
6 sor, county superintendent of schools, notary public, jus-
7 tice of the peace and constable shall give bond with good
8 security, to be approved, unless otherwise provided by
9 law, by the county court of the county in which such of-
10 ficer is to act. The penalty of the bond of each commis-
11 sioner of a county court shall be not less than five thou-
12 sand dollars nor more than ten thousand dollars, the
13 amount to be fixed by the circuit court of the county, or
14 the judge thereof in vacation, by order entered of record
15 on the proper order books of both the county and cir-
16 cuit courts; of the clerk of the circuit court, not less
17 than three thousand nor more than twenty-five thousand
18 dollars; of the sheriff, not less than twenty-five thousand
19 dollars nor more than the aggregate amount of all state,
20 county, district, school, municipal and other moneys
21 which will probably come into his hands during any one
22 year of his term of office; of the surveyor of lands, not
23 less than one thousand nor more than three thousand dol-
24 lars; of the clerk of the county court not less than three
25 thousand nor more than ten thousand dollars; of the as-
26 sessor, not less than two thousand nor more than five
27 thousand dollars; of the county superintendent of schools,
28 not less than one thousand nor more than three thousand
29 dollars; of a notary public, not less than two hundred and
30 fifty nor more than one thousand dollars; of a justice of
31 the peace and of a constable, not less than two thousand
32 nor more than fifteen thousand dollars: *Provided, how-*
33 *ever,* That the bond herein required to be given by a

34 notary public may be given before the clerk of the county
35 court, in the vacation of said court, and approved by it at
36 its next regular session.

CHAPTER 25

(Senate Bill No. 317—By Mr. Mitchell)

AN ACT to amend and reenact section three-c, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers of county courts with respect to the purchase, installation and maintenance of photo copying, microphotographic or other miniature photographic processes, appliances and supplies.

[Passed March 7, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 1. County Courts Generally.

Section

3-c. Powers with respect to the purchase, installation and maintenance of photo copying equipment, microphotographic or other miniature photographic processes, appliances and supplies.

Be it enacted by the Legislature of West Virginia:

That section three-c, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3-c. *Powers with Respect to the Purchase, Installation and Maintenance of Photo Copying Equipment, Microphotographic or Other Miniature Photographic Processes, Appliances and Supplies.*—In addition to all other powers and duties now conferred by law upon county courts, such courts are hereby authorized and empowered to purchase, install and maintain photo copying equipment, microphotographic, or other miniature photographic processes, appliances and supplies desig-

10 nated for copying photographically or microphotographi-
11 cally all or any number of its deeds, documents, books,
12 records, plats or maps, or other writing, for use by the
13 clerks of the several county courts and to pay therefor
14 and for the maintenances thereof out of the county treas-
15 ury. The actions of the county courts in heretofore pur-
16 chasing and maintaining such equipment is now ratified.

CHAPTER 26

(Senate Bill No. 190—By Mr. Martin)

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-h, relating to county court authority and procedure for closing and vacating unused roads, streets and other designated travel ways in subdivisions of land and elsewhere outside of municipalities.

[Passed March 4, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 1. County Courts Generally.

Section

3-h. Authority and procedure for closing unused streets and travel ways; notice; rights of landowners.

Be it enacted by the Legislature of West Virginia:

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-h, to read as follows:

Section 3-h. *Authority and Procedure for Closing Un-
2 used Streets and Travel Ways; Notice; Rights of Land-
3 owners.*—The county court of any county, upon the veri-

4 filed application of any landowner whose land abuts on
5 any unused road, street or other travel way designated
6 on any map or plat of a subdivision of land or otherwise
7 within such county but outside of incorporated towns or
8 cities thereof, is hereby authorized to close and vacate
9 any part or all of any such unused road, street or other
10 designated travel way by order entered of record after
11 hearing as hereinafter provided. Before acting to close
12 and vacate any such road, street or travel way, the county
13 court shall consider the application and shall fix a time
14 and place for hearing on such application. Such hearing
15 shall be held not less than fifteen days after the hearing
16 date and place have been so fixed. The applicant shall
17 cause to be published one time, in a newspaper of gen-
18 eral circulation in the county, at least fifteen days before
19 such hearing, notice of the time and place of such hear-
20 ing and the purpose thereof, and shall cause to be served,
21 at least fifteen days before such hearing, in the manner
22 provided by law for the service of notices and process, a
23 notice showing the time, place and purpose of such hear-
24 ing, upon every owner of property, and every person
25 holding a lien thereon, abutting on such unused road,
26 street or other travel way. The certificate of publica-
27 tion of such notice shall be filed with the county court
28 at or before the hearing as a part of the record in the
29 proceedings.

30 At the time and place fixed for the hearing, the county
31 court shall hear any evidence relating to the use of and
32 rights or claims in or to any such road, street or other
33 designated travel way sought to be closed and vacated.
34 If the county court concludes and finds upon the
35 record and evidence in the proceedings that the use and
36 rights of no person or persons in such road, street or
37 other travel way will be impaired or lost by the closing
38 and vacation thereof, the county court shall proceed to
39 enter an order closing and vacating such road, street or
40 other travel way and shall cause a copy of said order to
41 be prepared and certified for entry of record in the office
42 of the clerk of such county court. The applicant shall pay
43 the recording fee thereon.

44 Any person aggrieved by the action of the county court
45 in any such case may seek review thereof in the circuit
46 court of the county as provided in article three of chap-
47 ter fifty-eight of this code.

CHAPTER 27

(Com. Sub. for Senate Bill No. 28—Originating in the
Senate Committee on the Judiciary)

AN ACT to amend chapter seven, article three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to display of flags from county court-houses and in circuit courtrooms.

[Passed February 5, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 3. County Property.

Section

2-a. County courts to purchase and display flags; when and where to display.

Be it enacted by the Legislature of West Virginia:

That chapter seven, article three of the code of West Virginia, as amended, be amended by adding thereto a new section, designated section two-a, to read as follows:

Section 2-a. *County Courts to Purchase and Display*
2 *Flags; When and Where to Display.*—The county court of
3 every county of the state shall, out of its general revenue
4 fund, cause to be purchased a United States flag and a
5 flag of the state of West Virginia, four feet by six feet in
6 dimensions and of regulation bunting, or of other appro-
7 priate size and quality, for its courthouse, and shall re-
8 quire the same to be displayed from such courthouse, or
9 from an appropriate staff or pole near thereto, every day
10 between the hours of sunrise and sunset, except in inclem-

11 ent weather. Each county court shall likewise cause to
12 be purchased a United States flag and a flag of the state
13 of West Virginia, and require same to be displayed at all
14 times in the circuit courtroom of such county. It shall be
15 the duty of the custodian or other person in charge of
16 such courthouse to see that the flags are displayed as
17 herein provided.

CHAPTER 28

(House Bill No. 283—By Mr. Brotherton and Mr. Charnock)

AN ACT to amend and reenact section three, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employment of counsel by county courts.

[Passed March 2, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 4. Prosecuting Attorney, Rewards and Legal Advice.

Section

3. Employment of counsel.

Be it enacted by the Legislature of West Virginia:

That section three, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. *Employment of Counsel.*—The county court
2 of any county, having a population, according to the last
3 official census, of eighty thousand or more, together with
4 the judge of the circuit court of such county, shall have
5 authority to employ such legal counsel as they may deem
6 necessary for the purpose of advising such county court
7 touching all matters of a civil character and to conduct
8 any litigation of a civil character to which the county
9 is a party. The county court shall also have authority to
10 fix the compensation of any counsel so employed, which

11 shall not exceed the sum of six thousand dollars annually,
12 and to pay the same out of the county treasury. Any such
13 counsel so employed may be removed at the pleasure of
14 the county court.

CHAPTER 29

(Senate Bill No. 247—By Mr. Martin)

AN ACT to amend and reenact section two, article six, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to bonds of banking institutions designated as county depositories.

[Passed March 7, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 6. County Depositories.

Section

2. Bond of depositories.

Be it enacted by the Legislature of West Virginia:

That section two, article six, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2. *Bond of Depositories.*—No such designation
2 shall be binding on such county, nor shall any public
3 money be deposited thereunder, until the banking insti-
4 tution designated shall execute bond with good and suf-
5 ficient sureties, to be accepted and approved by the
6 county court, payable to the state of West Virginia, in
7 such sum as the county court shall direct, and which
8 shall not be less than the maximum sum that shall be de-
9 posited in the depository at any one time. Such bond
10 shall be executed by at least four resident freeholders as
11 sureties owning in the aggregate unencumbered real
12 estate having an assessed valuation thereon equal to the

13 penalty of the bond, or by a fidelity or indemnity com-
14 pany authorized to do such business within the state,
15 satisfactory to and acceptable by the county court, and
16 having not less than six hundred thousand dollars capital;
17 and such bond shall be conditioned for the receipt, safe-
18 keeping and payment over of all money which may be
19 deposited in or come under the custody of the banking
20 institution designated a county depository under the pro-
21 visions hereof, together with the interest thereon at the
22 rate specified by this article; and such bond shall be fur-
23 ther conditioned for the faithful performance, by the
24 banking institution so designated, of all the duties im-
25 posed by this article upon a depository of public moneys:
26 *Provided, however,* That the clerk of the county court
27 shall keep a record of each surety on all personal bonds
28 given as hereinbefore provided for, and the clerk shall
29 notify the county court of every recorded conveyance of
30 real estate made by any surety on said personal bond.

31 An action shall lie on such bond at the instance of the
32 county court, or the sheriff, for the recovery of any money
33 deposited in the depository, upon failure or default of the
34 depository to fully and faithfully account for and pay
35 over any and all public moneys deposited by the sheriff
36 and of all interests earned and accrued thereon as re-
37 quired by this article. Such bond shall not be accepted
38 by the county court until it shall have been submitted to
39 the prosecuting attorney, and certified by him to be in
40 due and legal form, and conformable to the provisions of
41 this article, which certificate shall be indorsed thereon:
42 *Provided, however,* That the county court may, in lieu of
43 the bond provided for hereinbefore, accept as security for
44 money deposited as aforesaid, interest-bearing securities
45 of the United States, or of a state, county, district or mu-
46 nicipal corporation, or of the federal land banks, or in-
47 dorsed county and district warrants of the county in
48 which the depository is located; the face value of which
49 securities shall not be less than the sum hereinbefore
50 specified as the amount to be named in the bond in lieu
51 of which such securities are accepted; or the county court
52 may accept such securities as partial security to the
53 extent of their face value for the money so deposited, and

54 require bond for the remainder of the full amount herein-
55 before specified, to be named in the bond, and in the bond
56 so required, such acceptance of securities as partial se-
57 curity, and the extent thereof, shall be set forth. The
58 hypothecation of such securities shall be by proper legal
59 transfer as collateral security to protect and indemnify
60 by trust any and all loss in case of any default on the part
61 of the banking institution in its capacity as depository as
62 aforesaid. All such securities shall be delivered to or
63 deposited for the account of the county court, and with-
64 drawal or substitution thereof may be permitted from
65 time to time upon approval by the county court by order
66 of record, but such collateral security shall be released
67 only by order of record of the county court when satisfied
68 that full and faithful accounting and payment of all the
69 moneys has been made under the provisions hereof. In
70 the event actual possession of such hypothecated securi-
71 ties are delivered to the county court, it shall make ample
72 provision for the safekeeping thereof, and the interest
73 thereon when paid shall be turned over to the banking
74 institution, so long as it is not in default as aforesaid.
75 The county court may permit the deposit under proper
76 receipt of such securities with one or more banking in-
77 stitutions within or without the state of West Virginia
78 and may contract with any such institution for safekeep-
79 ing and exchange of any such hypothecated securities,
80 and may prescribe the rules and regulations for handling
81 and protecting the same.

CHAPTER 30

(Com. Sub. for Senate Bill No. 55—Originating in the Senate
Committee on Counties and Municipal Corporations)

AN ACT to amend and reenact section six, article seven, chap-
ter seven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, and to amend said article
seven by adding thereto fifty-five new sections, designated
sections six-(one) through six-(fifty-five), inclusive, all
relating to the employment, duties and compensation of

assistants, stenographers and clerks for prosecuting attorneys.

[Passed March 9, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 7. Salaries; Deputies and Assistants and Their Salaries.

Section

6. Assistants, stenographers and clerks for prosecuting attorney; salaries; when court may appoint attorney to prosecute.
6-(1) to 6-(55). Salaries of assistants, stenographers and clerks for prosecuting attorney of the various counties of the state.

Be it enacted by the Legislature of West Virginia:

That section six, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said article seven be amended by adding thereto fifty-five new sections, designated sections six-(one) through six-(fifty-five), inclusive, all to read as follows:

Section 6. *Assistants, Stenographers and Clerks for Prosecuting Attorney; Salaries; When Court May Appoint Attorney to Prosecute.*—The prosecuting attorneys of the several counties of the state may, with the assent of the county courts of their respective counties, entered of record, appoint to assist them in the discharge of their official duties for and during their respective terms of office, the number of practicing attorneys, stenographers and clerks set forth in sections six-(one) through six-(fifty-five), inclusive, of this article. Each such assistant prosecuting attorney shall take the same oath and may perform the same duties as his principal. Each assistant shall serve at the will and pleasure of his principal and he may be removed from office by the circuit court of the county in which he is appointed for any cause for which his principal might be removed.

If in any case the prosecuting attorney and his assistant be unable to act, or if in the opinion of the court it would be improper for him or his assistant to act, the court shall appoint some competent practicing attorney to act

21 in such case. The court shall certify to the county court
22 the performance of such service when completed and
23 recommend to the county court a reasonable allowance
24 for such attorney for such service, and such sum, when
25 allowed by the county court, shall be paid out of the
26 county treasury. No provision of this section shall be con-
27 strued to prohibit the employment by any person of a
28 competent attorney or attorneys to assist in the prosecu-
29 tion of any person or corporation charged with crime.

30 The county courts of the several counties shall com-
31 pensate the assistant prosecuting attorneys, stenogra-
32 phers and clerks of their respective counties in accord-
33 ance with the following annual salary provisions:

34 (1) In counties for which definite salaries are fixed by
35 provisions of sections six-(one) through six-(fifty-five),
36 inclusive, of this article, such definite salaries shall be
37 paid.

38 (2) In counties for which minimum and maximum sal-
39 ary limits are fixed by provisions of sections six-(one)
40 through six-(fifty-five), inclusive, of this article, the sal-
41 aries shall be fixed and paid within such limits.

42 (3) In the counties for which salaries are not fixed
43 and limited by provisions of sections six-(one) through
44 six-(fifty-five), inclusive, of this article, reasonable
45 salaries shall be fixed and paid by the respective county
46 courts.

47 Such salaries and compensation shall be paid monthly,
48 semi-monthly or otherwise as provided by law. In any
49 case wherein provision is not made in this article for pay-
50 ment of the salary of an assistant prosecuting attorney,
51 the principal shall pay and compensate such assistant for
52 services rendered. The compensation and salaries to be
53 paid assistant attorneys as provided in this article shall
54 include compensation provided by law for such assistant's
55 services as attorney for the county board of education
56 and other administrative boards and officers of his county.

Sec. 6-(1). *Barbour County*.—For the county of Bar-
2 bour, one assistant attorney, one thousand dollars; one

3 stenographer, not less than one thousand two hundred
4 nor more than one thousand eight hundred dollars.

2 Sec. 6-(2). *Berkeley County*.—For the county of Berke-
3 ley, one assistant attorney, not more than two thousand
4 four hundred dollars; one stenographer, not more than
4 two thousand four hundred dollars.

2 Sec. 6-(3). *Boone County*.—For the county of Boone,
3 one assistant attorney, not less than two thousand nor
4 more than three thousand dollars; one stenographer at
4 two thousand four hundred dollars.

2 Sec. 6-(4). *Braxton County*.—For the county of Brax-
3 ton, one assistant attorney; one stenographer at one thou-
4 sand four hundred dollars.

2 Sec. 6-(5). *Brooke County*.—For the county of Brooke,
3 one assistant attorney; one stenographer, not less than
4 nine hundred nor more than two thousand five hundred
4 dollars.

2 Sec. 6-(6). *Cabell County*.—For the county of Cabell,
3 two assistant attorneys, six thousand five hundred dol-
4 lars each; two stenographers, not more than four thous-
4 and dollars each.

2 Sec. 6-(7). *Calhoun County*.—For the county of Cal-
3 houn, one assistant attorney, three hundred dollars; one
3 stenographer, at not more than twelve hundred dollars.

2 Sec. 6-(8). *Clay County*.—For the county of Clay, one
3 assistant attorney; one clerk or stenographer or in lieu
4 thereof one practicing attorney, not less than one thou-
4 sand nor more than one thousand eight hundred dollars.

2 Sec. 6-(9). *Doddridge County*.—For the county of Dod-
3 dridge, one assistant attorney; one stenographer, not more
3 than one thousand eight hundred dollars.

2 Sec. 6-(10). *Fayette County*.—For the county of Fay-
3 ette, first assistant attorney, five thousand dollars; second
4 assistant attorney, four thousand four hundred dollars;
4 one stenographer three thousand dollars.

2 Sec. 6-(11). *Gilmer County*.—For the county of Gilmer,
3 one assistant attorney; one stenographer, not more than
3 one thousand two hundred dollars.

2 Sec. 6-(12). *Grant County*.—For the county of Grant,
3 one assistant attorney; one stenographer or clerk, not
4 more than one thousand two hundred dollars.

2 Sec. 6-(13). *Greenbrier County*.—For the county of
3 Greenbrier, one assistant attorney; one stenographer, not
4 more than two thousand nine hundred forty dollars.

2 Sec. 6-(14). *Hampshire County*.—For the county of
3 Hampshire, one assistant attorney; one stenographer, not
4 less than one thousand two hundred nor more than two
5 thousand dollars.

2 Sec. 6-(15). *Hancock County*.—For the county of Han-
3 cock, one assistant attorney, not less than one thousand
4 eight hundred nor more than three thousand dollars; one
5 stenographer, not more than two thousand eight hundred
6 dollars.

2 Sec. 6-(16). *Hardy County*.—For the county of Hardy,
3 one assistant attorney; one stenographer or one clerk at
4 salary fixed by prosecuting attorney, not to exceed one
5 thousand twenty dollars.

2 Sec. 6-(17). *Harrison County*.—For the county of Har-
3 rison, first assistant attorney, six thousand five hundred
4 dollars; second assistant attorney, five thousand five hun-
5 dred dollars; two stenographers, not less than nine hun-
6 dred dollars nor more than three thousand six hundred
7 dollars for each.

2 Sec. 6-(18). *Jackson County*.—For the county of Jack-
3 son, one assistant attorney; one stenographer, not more
4 than one thousand eight hundred dollars and not less than
5 one thousand two hundred dollars.

2 Sec. 6-(19). *Jefferson County*.—For the county of Jef-
3 ferson, the prosecuting attorney may employ a steno-
4 grapher for his office at a salary of not less than one thous-
5 and five hundred dollars nor more than two thousand one
6 hundred dollars per annum, payable out of the county
7 treasury to be fixed by the said prosecuting attorney of
8 said county of Jefferson.

2 Sec. 6-(20). *Kanawha County*.—For the county of Kan-
3 awha, three assistant attorneys, not less than six thousand

3 nor more than seven thousand six hundred dollars each;
4 three stenographers, at a salary not to exceed three thousand
5 and six hundred dollars each.

Sec. 6-(21). *Lewis County*.—For the county of Lewis,
2 one assistant attorney, not more than one thousand two
3 hundred dollars; one stenographer, not less than six hundred
4 nor more than one thousand eight hundred dollars.

Sec. 6-(22). *Lincoln County*.—For the county of Lincoln,
2 one assistant attorney, not more than three thousand
3 six hundred dollars; one stenographer or clerk, not more
4 than three thousand dollars.

Sec. 6-(23). *Logan County*.—For the county of Logan,
2 one assistant attorney, at five thousand five hundred dollars;
3 one stenographer, not more than three thousand nine
4 hundred dollars; second stenographer, not more than three
5 thousand three hundred dollars.

Sec. 6-(24). *Marion County*.—For the county of Marion,
2 two assistant attorneys, not less than four thousand two
3 hundred nor more than four thousand eight hundred dollars
4 for each; one stenographer, not more than two thousand
5 sand eight hundred dollars.

Sec. 6-(25). *Marshall County*.—For the county of Marshall,
2 one assistant attorney at two thousand four hundred dollars;
3 one stenographer or clerk, not less than two
4 thousand eight hundred nor more than three thousand
5 dollars.

Sec. 6-(26). *Mason County*.—For the county of Mason,
2 one assistant attorney; one stenographer, not less than
3 one thousand one hundred nor more than one thousand
4 five hundred dollars.

Sec. 6-(27). *McDowell County*.—For the county of McDowell,
2 two assistant attorneys, not less than three thousand
3 nor more than four thousand eight hundred dollars
4 for each; one stenographer, not less than one thousand
5 five hundred nor more than three thousand dollars.

Sec. 6-(28). *Mercer County*.—For the county of Mercer,
2 one assistant attorney, at five thousand dollars; one stenographer
3 or clerk, not more than three thousand dollars.

2 Sec. 6-(29). *Mineral County*.—For the county of Min-
3 eral, one assistant attorney, not more than one thousand
4 two hundred dollars; one stenographer, not less than three
5 thousand dollars.

2 Sec. 6-(30). *Mingo County*.—For the county of Mingo,
3 one assistant attorney, not more than four thousand dol-
4 lars; one stenographer, not more than three thousand six
5 hundred dollars.

2 Sec. 6-(31). *Monongalia County*.—For the county of
3 Monongalia, one assistant attorney, at four thousand dol-
4 lars; one stenographer, not less than two thousand four
5 hundred nor more than three thousand six hundred dol-
6 lars.

2 Sec. 6-(32). *Monroe County*.—For the county of Mon-
3 roe, one assistant attorney; one stenographer, not more
4 than six hundred dollars.

2 Sec. 6-(33). *Morgan County*.—For the county of Mor-
3 gan, one assistant attorney.

2 Sec. 6-(34). *Nicholas County*.—For the county of Nich-
3 olas, one assistant attorney, not more than one thousand
4 two hundred dollars.

2 Sec. 6-(35). *Ohio County*.—For the county of Ohio, first
3 assistant attorney, at four thousand five hundred dollars;
4 second assistant attorney, at four thousand dollars; third
5 assistant attorney, at three thousand five hundred dollars;
6 one stenographer, not more than two thousand seven
7 hundred dollars; second stenographer, not more than one
8 thousand two hundred dollars.

2 Sec. 6-(36). *Pendleton County*.—For the county of
3 Pendleton, one assistant attorney; one stenographer or
4 clerk, not more than one thousand eighty dollars.

2 Sec. 6-(37). *Pleasants County*.—For the county of
3 Pleasants, one stenographer, not more than one thousand
4 dollars.

2 Sec. 6-(38). *Pocahontas County*.—For the county of
3 Pocahontas, one assistant attorney; one stenographer, not
4 more than one thousand eight hundred dollars.

2 Sec. 6-(39). *Preston County*.—For the county of Pres-
3 ton, one assistant attorney at a salary not exceeding two
4 thousand seven hundred dollars; one stenographer, not
4 more than two thousand seven hundred dollars.

2 Sec. 6-(40). *Putnam County*.—For the county of Put-
3 nam, one assistant attorney, not more than two thousand
4 dollars; one stenographer, not more than two thousand
4 four hundred dollars.

2 Sec. 6-(41). *Raleigh County*.—For the county of Ra-
3 leigh, one assistant attorney, at five thousand dollars; one
4 stenographer, not more than three thousand three hun-
4 dred dollars.

2 Sec. 6-(42). *Randolph County*.—For the county of Ran-
3 dolph, one assistant attorney, not more than two thousand
4 seven hundred dollars; one stenographer, not less than
5 one thousand five hundred nor more than two thousand
5 four hundred dollars.

2 Sec. 6-(43). *Ritchie County*.—For the county of Ritchie,
3 one assistant attorney; one stenographer, not less than
4 one thousand nor more than one thousand five hundred
4 dollars.

2 Sec. 6-(44). *Roane County*.—For the county of Roane,
3 one assistant attorney; one stenographer, not less than
4 one thousand five hundred nor more than two thousand
4 four hundred dollars.

2 Sec. 6-(45). *Summers County*.—For the county of Sum-
3 mers, one assistant attorney, not less than one thousand
4 nor more than two thousand dollars; one stenographer, not
5 less than one thousand five hundred nor more than two
5 thousand four hundred dollars.

2 Sec. 6-(46). *Taylor County*.—For the county of Taylor,
3 one assisfant attorney; one stenographer, not less than
4 one thousand two hundred nor more than three thousand
4 dollars.

2 Sec. 6-(47). *Tucker County*.—For the county of Tucker,
3 one assistant attorney.

2 Sec. 6-(48). *Tyler County*.—For the county of Tyler,
3 one assistant attorney; one stenographer, not more than
3 one thousand eight hundred dollars.

Sec. 6-(49). *Upshur County*.—For the county of Upshur,
2 one assistant attorney, not more than one thousand two
3 hundred dollars; one stenographer, not more than nine
4 hundred dollars.

Sec. 6-(50). *Wayne County*.—For the county of Wayne,
2 one assistant attorney, at three thousand six hundred dol-
3 lars; one stenographer, not less than two thousand seven
4 hundred nor more than three thousand dollars.

Sec. 6-(51). *Webster County*.—For the county of Web-
2 ster, one assistant attorney, not less than six hundred nor
3 more than nine hundred dollars; one stenographer, one
4 thousand five hundred dollars.

Sec. 6-(52). *Wetzel County*.—For the county of Wetzel,
2 one assistant attorney, not less than nine hundred dollars
3 nor more than one thousand two hundred dollars; one
4 stenographer, not more than two thousand eight hundred
5 dollars.

Sec. 6-(53). *Wirt County*.—For the county of Wirt, one
2 assistant attorney.

Sec. 6-(54). *Wood County*.—For the county of Wood,
2 one assistant attorney, at two thousand five hundred
3 dollars; one stenographer, not less than nine hundred nor
4 more than two thousand dollars.

Sec. 6-(55). *Wyoming County*.—For the county of
2 Wyoming, one assistant attorney, not less than one thou-
3 sand five hundred nor more than two thousand seven
4 hundred dollars; one stenographer at salary fixed by
5 county court.

CHAPTER 31

(House Bill No. 284—By Mr. Brotherton and Mr. Charnock)

AN ACT to amend and reenact sections one, two, three, four and five, article eleven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creation of a board of park commissioners by county courts in counties having a population

in excess of two hundred thousand persons, to establish, maintain, develop and operate a park and recreation system for the county, providing its name, defining its powers, providing for the appointment and qualification of its members; the term of office of the members and their qualifications; and the powers and authority of such board of commissioners.

[Passed March 6, 1957; in effect from passage. Approved by the Governor.]

Article 11. Board of Park and Recreation Commissioners.

Section

1. County courts authorized to create a board of park and recreation commissioners.
2. Board, a body corporate; perpetual existence; name; powers.
3. Members; qualifications; appointment; term; disqualifications.
4. Oath of members; organization of board; secretary.
5. General powers of the board.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and five, article eleven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *County Courts Authorized to Create a Board of Park and Recreation Commissioners.*—The county court of any county in the state of West Virginia having a population in excess of two hundred thousand persons is hereby authorized and empowered by order entered of record, to create a board of park and recreation commissioners for the purpose of establishing, improving, developing, operating and maintaining a county public park and recreation system.

Sec. 2. *Board, a Body Corporate; Perpetual Existence; Name; Powers.*—The board of park and recreation commissioners created by the county court, enacted pursuant to the authority of this article, shall be a public corporate board, with perpetual existence and a corporate seal. It shall be known as the board of park and recreation commissioners of such county. It shall have the power to

8 receive any gift, grant, donation and bequest or devise;
9 sue and be sued; contract and be contracted with and to
10 do any and all things which may be necessary or con-
11 venient to carry out and effectuate the purposes and pro-
12 visions of this article.

Sec. 3. *Members; Qualifications; Appointment; Term; Disqualifications.*—The board shall consist of eleven mem-
2 bers, a majority of whom shall constitute a quorum for
3 the transaction of business. Each member of said board
4 shall be a bona fide resident of the county and shall own
5 real estate within such county. The term of the board
6 membership shall be for three years and until their suc-
7 cessors have been appointed and qualified: *Provided, how-*
8 *ever,* That the county court in appointing the members
9 of the first board shall appoint three members for a term
10 of one year; four members for a term of two years and
11 four members for a term of three years. The order of
12 the county court shall fix the date on which the term of
13 such board members shall begin. Any member of the
14 board, who shall cease to be a bona fide resident of the
15 county or a freeholder thereof, shall thereby be dis-
16 qualified as a member of said board and his office shall
17 become vacant. When a vacancy occurs on said board
18 by reason of death, resignation, change of residence from
19 the county or expiration of term, the county court shall
20 appoint a successor or successors who shall fill out the
21 unexpired term of such member of the board whose term
22 has been vacated.
23

Sec. 4. *Oath of Members; Organization of Board; Sec-*
2 *retary.*—After appointment, the members of the board
3 shall qualify by taking and filing with the clerk of the
4 county court the oath prescribed by law of public officials;
5 one of the members of said board shall be elected as
6 president, another as vice president, and a secretary shall
7 be elected who need not be a member of the board. Said
8 board of park and recreation commissioners shall main-
9 tain an office at any place they may designate in the
10 county and have control of the management and opera-
11 tion of all properties which shall be operated in connec-

12 tion with the public park and recreation system of such
13 county and shall have power to employ such persons as,
14 in its opinion, may be necessary for the construction, op-
15 eration, and maintenance of the property under its con-
16 trol, subject, however, to the appropriation of money for
17 such purpose by the county court of such county and its
18 written approval thereof.

Sec. 5. *General Powers of the Board.*—The board of
2 park and recreation commissioners of any county shall
3 have the necessary powers and authority to manage and
4 control all public parks, and recreation facilities owned
5 by the county and used as a part of such public park and
6 recreation system, including the right to make rules and
7 regulations concerning the management and control of
8 such parks and to enforce any such rules and regulations
9 so promulgated.

CHAPTER 32

(Com. Sub. for House Bill No. 99—Originating in the
House Committee on Finance)

AN ACT to amend and reenact section four, article seven, chap-
ter six of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to salaries of
judges of circuit courts.

[Passed March 6, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 7. Compensation and Allowances.

Section

4. Salaries of judges of circuit courts; additional compensation from
counties.

Be it enacted by the Legislature of West Virginia:

That section four, article seven, chapter six of the code of
West Virginia, one thousand nine hundred thirty-one, as amend-
ed, be amended and reenacted to read as follows:

Section 4. *Salaries of Judges of Circuit Courts; Additional Compensation from Counties.*—The salaries of the judges of the circuit courts shall be paid out of the state treasury and shall, unless otherwise provided by law, be in the following annual amounts:

(1) In circuits having more than one hundred thousand population, twelve thousand two hundred dollars;

(2) In circuits having more than eighty thousand and less than one hundred thousand population, eleven thousand two hundred dollars;

(3) In circuits having more than sixty thousand and less than eighty thousand population, ten thousand seven hundred dollars;

(4) In circuits having less than sixty thousand population, ten thousand two hundred dollars.

Any county court or the board of county commissioners of Ohio county may pay the judge of the circuit court additional compensation, but the salary and additional compensation or combined contribution of the several county courts and board of commissioners shall not exceed eighteen thousand two hundred dollars.

The population shall be according to the United States census, or the estimate of the United States bureau of census, as certified to the state auditor by the United States director of the census last preceding the beginning of the calendar year in which the salary is payable.

CHAPTER 33

(Senate Bill No. 86—By Mr. Stemple)

AN ACT to amend and reenact section six, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the allowances to circuit judges for stationery, postage and stenographic help, and to payments therefor.

[Passed March 8, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 7. Compensation and Allowances.**Section**

6. Allowances to circuit judges for stationery, postage and stenographic help; payments therefor.

Be it enacted by the Legislature of West Virginia:

That section six, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 6. *Allowances to Circuit Judges for Stationery, Postage and Stenographic Help; Payments Therefor.*—
3 Each judge of the circuit court shall be allowed an
4 amount not to exceed two hundred twenty-five dollars
5 per month for the payment of stenographic help neces-
6 sary in the discharge of the duties of his office, and each
7 judge shall be allowed an amount not to exceed twenty-
8 five dollars per month for the procurement of necessary
9 stationery, payment of postage, and necessary supplies
10 for his office. The judge shall be reimbursed for the
11 actual amounts expended by him for stationery, sup-
12 plies and postage. Payment for stenographic help shall
13 be made directly to the person performing the steno-
14 graphic work. Such amounts shall be paid monthly out
15 of the state treasury, but not until the judge submits an
16 itemized statement covering the same.

CHAPTER 34

(House Bill No. 34—By Mr. Morford and Mr. Taylor)

AN ACT to amend and reenact section one-e, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to terms of court in the fifth judicial circuit.

Article 2. Circuit Courts; Circuit, Criminal and Intermediate Judges.**Section**

1-e. Fifth circuit.

Be it enacted by the Legislature of West Virginia:

That section one-e, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 1-e. *Fifth Circuit.*—For the county of Calhoun,
- 2 on the third Monday in February, June and October.
 - 3 For the county of Jackson, on the first Monday in March,
 - 4 July and November.
 - 5 For the county of Mason, on the first Monday in January,
 - 6 May and September.
 - 7 For the county of Roane, on the fourth Monday in Jan-
 - 8 uary, May and September.

CHAPTER 35

(House Bill No. 202—By Mr. Carr)

AN ACT to amend and reenact section one-k, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to terms of court in the eleventh judicial circuit.

[Passed February 8, 1957; in effect from passage. Approved by the Governor.]

Article 2. Circuit Courts; Circuit, Criminal and Intermediate Judges.**Section**

1-k. Eleventh circuit.

Be it enacted by the Legislature of West Virginia:

That section one-k, article two, chapter fifty-one of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 1-k. *Eleventh Circuit*.—For the county of Pocahontas, on the second Tuesday in March, the second Tuesday in June, and the first Tuesday in October.
- 4 For the county of Greenbrier, on the third Tuesday in April, the fourth Tuesday in July, and the second Tuesday in November.
- 7 For the county of Monroe, on the first Tuesday in April, the second Tuesday in July, and the third Tuesday in October.
- 10 For the county of Summers, on the second Tuesday in January, the third Tuesday in May, and the second Tuesday in September.

CHAPTER 36

(House Bill No. 148—By Mr. Kidd and Mr. Cruikshank)

AN ACT to amend and reenact section one-n, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to terms of court in the fourteenth judicial circuit.

[Passed January 31, 1957; in effect April 10, 1957. Approved by the Governor.]

Article 2. Circuit Courts; Circuit, Criminal and Intermediate Judges.

Section

1-n. Fourteenth circuit.

Be it enacted by the Legislature of West Virginia:

That section one-n, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 1-n. *Fourteenth Circuit*.—For the county of Braxton on the first Monday in February, June and October.

- 4 For the county of Clay on the third Monday in March,
5 July and November.
- 6 For the county of Gilmer on the first Monday in March,
7 July and November.
- 8 For the county of Webster on the first Monday in Janu-
9 ary, May and September.

CHAPTER 37

(House Bill No. 301—By Mr. McCoy)

AN ACT to amend and reenact section one-v, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the terms of court in the twenty-second judicial circuit.

[Passed February 19, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 2. Circuit Courts; Circuit, Criminal and Intermediate Judges.

Section

1-v. Twenty-second circuit.

Be it enacted by the Legislature of West Virginia:

That section one-v, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 1-v. *Twenty-second Circuit.*—For the county of
- 2 Hampshire, on the first Tuesday in January, March and
3 July, and the third Tuesday in September.
- 4 For the county of Hardy, on the third Tuesday in
5 February, June and October.
- 6 For the county of Pendleton, on the third Tuesday in
7 March, the fourth Tuesday in July, and the third Tuesday
8 in November.

CHAPTER 38

(House Bill No. 76—By Mr. Bower and Mr. England)

AN ACT to amend and reenact section one-aa, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to terms of the circuit court of the twenty-seventh circuit.

[Passed February 4, 1957; in effect from passage. Approved by the Governor.]

Article 2. Circuit Courts; Circuit, Criminal and Intermediate Judges.

Section

1-aa. Twenty-seventh circuit.

Be it enacted by the Legislature of West Virginia:

That section one-aa, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1-aa. *Twenty-Seventh Circuit.*—For the county
2 of Wyoming on the second Monday in March, the second
3 Monday in May, and the second Monday in September
4 and November.

CHAPTER 39

(House Bill No. 102—By Mr. Speaker, Mr. Flannery and Mr. Seibert)

AN ACT to amend and reenact section four, article nine, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to retirement system for judges of courts of record and contributions to retirement fund by judges.

[Passed March 8, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 9. Retirement System for Judges of Courts of Record.**Section**

4. Percentage contributions from salaries; termination of contributions.

Be it enacted by the Legislature of West Virginia:

That section four, article nine, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 4. *Percentage Contributions from Salaries; Termination of Contributions.*—Every person who is now or shall hereafter serve as a judge of any court of record of this state shall pay into the judges' retirement fund six per cent of the salary received by him either out of the state treasury or from any county court or courts of this state, or, if his total salary as such judge be paid in part out of the state treasury and in part by a county court or county courts, then six per cent of such total salary shall be paid into the said fund: *Provided*, That when a judge becomes eligible to receive benefits from said fund no further payment by him shall be required.

In drawing warrants for the salary checks of said judges, the state auditor shall deduct from the amount of each such salary check six per cent thereof, which amount so deducted shall be credited by the state treasurer to said fund. Where the salary, or any part thereof, of a judge is paid by a county court, such county court shall deduct from the amount of each such salary check six per cent of the amount thereof, which amount so deducted shall be paid by said county court into the state treasury to the credit of said fund.

CHAPTER 40

(House Bill No. 315—By Mr. Bachmann and Mr. Moreland)

AN ACT to amend and reenact sections three, seventeen, twenty-seven and thirty-nine, article three, chapter sixty-

one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes against property; penalties.

[Passed February 20, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 3. Crimes Against Property.

Section

- 3. Burning personal property of another of the value of fifty dollars; third degree arson.
- 17. Larceny of skiff, boat, timber and appliances; penalty.
- 27. Malicious killing of animals by poison or otherwise; penalty.
- 39. Giving worthless check; penalties.

Be it enacted by the Legislature of West Virginia:

That sections three, seventeen, twenty-seven and thirty-nine, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. *Burning Personal Property of Another of the Value of Fifty Dollars; Third Degree Arson.*—Any person who wilfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any personal property of any class or character (such property being of the value of not less than fifty dollars and the property of another person), shall be guilty of arson in the third degree and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than three years.

Sec. 17. *Larceny of Skiff, Boat, Timber and Appliances; Penalty.*—If any person unlawfully take and carry away or convert to his own use any skiff, boat or timber, whether the same be afloat or not, or if any person buy or receive from another person, or aid in concealing, any stolen rope, line fastening, connection or other appliances or device used to tie, moor, attach or fasten floating craft, timber or other material to a bank of any stream, knowing or

9 having cause to believe the same to have been stolen, he
10 shall be deemed guilty of the larceny thereof, and if the
11 value thereof exceed fifty dollars, he shall be guilty of
12 a felony, and, upon conviction, shall be confined in the
13 penitentiary not less than one nor more than five years;
14 and if the value be less than fifty dollars, he shall be
15 deemed guilty of a misdemeanor, and be punished as in
16 other cases of petit larceny. Any person so receiving such
17 property, knowing or having cause to believe the same
18 to be stolen, may be prosecuted although the principal
19 offender be not convicted.

Sec. 27. *Malicious Killing of Animals by Poison or Otherwise; Penalty.*—If any person maliciously administer
2 poison to, or expose it with intent that it should be taken
3 by, any horse, cattle or other beast, of another person, or
4 if any person maliciously maim, kill, or cause the death
5 of any horse, cattle or other beast, of another person, of
6 the value of fifty dollars or more he shall be guilty of a
7 felony, and, upon conviction, shall be confined in the
8 penitentiary not less than one nor more than five years;
9 and, if it be of less value than fifty dollars, he shall be
10 guilty of a misdemeanor, and, upon conviction, shall be
11 confined in jail not more than three months and fined not
12 more than fifty dollars, in the discretion of the court:
13 *Provided*, That this section shall not be construed to
14 include dogs.

Sec. 39. *Giving Worthless Check; Penalties.*—Any person
2 who, with intent to defraud, shall make, draw, issue,
3 utter or deliver to another any check, draft or order for
4 the payment of money upon any bank, or other depository,
5 and thereby obtain from such other any credit,
6 credit on account, money, goods or other property or thing
7 of value, knowing at the time of such making, drawing,
8 issuing, uttering or delivering that the maker or drawer
9 thereof has not sufficient funds in, or credit with such
10 bank or other depository for the payment of such check,
11 draft or order in full upon its presentment, shall be guilty
12 of a misdemeanor, if the amount of such check, draft or
13 order be under fifty dollars, and upon conviction thereof,

14 shall be confined in the county jail not less than five nor
15 more than sixty days, or fined not less than one hundred
16 dollars, or both fined and imprisoned; and if the amount
17 of such check, draft or order be fifty dollars or over, he
18 shall be guilty of a felony, and, upon conviction thereof,
19 shall be confined in the penitentiary not less than one
20 nor more than five years and be fined not more than one
21 thousand dollars. The making, drawing, issuing, uttering
22 or delivering of a check, draft or order upon such bank, or
23 other depository, by any person knowing that there is
24 not sufficient funds or credit in such bank or depository
25 from which the same can be paid on presentment shall,
26 as against the drawer, be prima facie evidence of knowl-
27 edge of insufficiency of funds, or lack of credit, and of
28 intent to defraud: *Provided, however,* That if such check,
29 draft or order be paid at any time previous to the trial
30 or examination of such person before a justice of the
31 peace, or before indictment of such person by a grand
32 jury, then no presumption of knowledge of insufficiency
33 of funds, or lack of credit, and of intent to defraud shall
34 arise.

35 The making, drawing, issuing, uttering or delivery of
36 any such check, draft or order, for or on behalf of any
37 corporation, or in its name, by any officer or agent of
38 such corporation, shall subject such officer or agent to
39 the penalties of this section to the same extent as though
40 such check, draft, or order was his own personal act,
41 when such agent or officer knows that such corporation
42 does not have sufficient funds or credit with such bank
43 or other depository from which such check, draft or order
44 can legally be paid upon presentment.

45 Such person, officer or agent, shall be prosecuted in the
46 county in which he makes, draws, issues or delivers such
47 check. Justices of the peace shall have jurisdiction to try
48 any misdemeanor charge hereunder. The word "credit"
49 as used herein shall be construed to mean an arrangement
50 or understanding with the bank or depository for the pay-
51 ment of such check, draft or order.

CHAPTER 41

(House Bill No. 175—By Mr. Bachmann and Mr. Moreland)

AN ACT to amend and reenact section thirteen, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to grand and petit larceny distinguished; penalties.

[Passed February 19, 1957; in effect from passage. Approved by the Governor.]

Article 3. Crimes Against Property.

Section

13. Grand and petit larceny distinguished; penalties.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 13. *Grand and Petit Larceny Distinguished; Penalties.*—If any person commit simple larceny of goods or chattels, he shall, if they be of the value of fifty dollars or more, be deemed guilty of grand larceny, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than ten years; and if they be of less value, he shall be deemed guilty of petit larceny, and, upon conviction thereof, be confined in jail not exceeding one year.

CHAPTER 42

(Com. Sub. for Senate Bill No. 62—Originating in the
Senate Committee on the Judiciary)

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

by adding thereto a new article, designated article three-a, providing that larceny or misappropriation of goods held for sale or obtaining such goods by false pretenses shall, under certain circumstances, constitute the crime of shoplifting as herein defined, providing penalties for such crime; declaring that a presumption of guilt shall arise under certain circumstances; declaring that said crime shall constitute a breach of the peace and authorizing the arrest of the persons committing such crime.

[Passed February 28, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 3-a. Shoplifting.

Section

1. Definitions.
2. Penalties.
3. Concealment of merchandise.
4. Shoplifting to constitute breach of peace.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-a, to read as follows:

Section 1. *Definitions.*—When used in this article, the following terms shall have the following meanings:

(1) “Shoplifting” shall consist of any one or more of the following acts:

(a) For any person wilfully to take possession of any merchandise offered for sale by any store with the intention of converting the same to the use of such person without paying to the owner the value thereof.

(b) For any person wilfully to conceal upon his person or otherwise any merchandise offered for sale by any store with the intention of converting the same to the use of such person without paying to the owner the value thereof.

14 (c) For any person wilfully to alter any label, price tag
15 or marking upon any merchandise offered for sale by any
16 store with the intention of depriving the owner of all or
17 some part of the value thereof.

18 (d) For any person wilfully to transfer any merchan-
19 dise offered for sale by any store from the container in or
20 on which the same shall be displayed to any other con-
21 tainer with intent to deprive the owner of all or some
22 part of the value thereof.

23 (2) "Store" shall mean any store or mercantile estab-
24 lishment in which merchandise is displayed for sale in
25 such manner as to be readily accessible to persons shop-
26 ping therein.

27 (3) "Merchandise" shall include goods and wares.

28 (4) "Owner of merchandise" shall include the owner
29 and any other person, firm or corporation having the right
30 to offer the same for sale as agent, consignee or in other
31 capacity under any agreement with the owner of such
32 merchandise.

33 (5) "Value of merchandise" shall mean the fair mar-
34 ket value of any merchandise which a person shall con-
35 vert to his own use in committing an act of shoplifting
36 defined in subsections (a) and (b) of this section, or in
37 the event a person shall commit an act of shoplifting de-
38 fined in either subsections (c) or (d) of this section, then
39 the "value of merchandise" shall mean the fair market
40 value of that part of the merchandise of which the owner
41 has been deprived in consequence of the commission of
42 such act of shoplifting.

Sec. 2. *Penalties.*—If any person shall commit an act
2 of shoplifting as defined in this article, he shall be guilty
3 of a misdemeanor if the value of the merchandise be
4 under fifty dollars and, upon conviction thereof, shall
5 be confined in the county jail not less than one day nor
6 more than twelve months, or fined not less than five
7 dollars nor more than five hundred dollars, or both fined
8 and imprisoned; and if the value of the merchandise be
9 fifty dollars or over, such person shall be guilty of a
10 felony and, upon conviction thereof, shall be confined in

11 the penitentiary not less than one nor more than ten
12 years and fined not more than one thousand dollars.

13 Justices of the peace shall have concurrent jurisdiction
14 with the circuit and criminal or intermediate courts of
15 misdemeanors under this section.

Sec. 3. *Concealment of Merchandise.*—If any person
2 shall wilfully conceal upon his person or otherwise mer-
3 chandise belonging to any store and for which such per-
4 son has not paid the purchase price in full, either upon
5 or away from the store premises, there shall be a prima
6 facie presumption that such person has concealed said
7 merchandise with the intent of converting the same to
8 his own use within the meaning of the definition of shop-
9 lifting contained in section one of this article.

Sec. 4. *Shoplifting to Constitute Breach of Peace.*—An
2 act of shoplifting, as herein defined, is hereby declared to
3 constitute a breach of the peace, and any citizen of this
4 state may arrest a person committing any such act of shop-
5 lifting in his presence.

CHAPTER 43

(House Bill No. 146—By Mr. Chilton and Mr. Brotherton)

AN ACT to amend chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article six-a, relating to sentencing, commitment and control of sex offenders.

[Passed March 9, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 6-a. Commitment, Sentencing and Control of Sex Offenders.

Section

1. Incest and crimes against nature; commitment for pre-sentence examinations.
2. Rape and other sex crimes.
3. Transportation.
4. Report of examination.

5. Sentence imposed.
6. Commitment to the board.
7. The effect of appeal from a judgment of convictions.
8. Notice of commitments; treatment; transfer; use of other facilities.
9. Periodic examinations.
10. Parole.
11. Duration of control.
12. Termination of control.
13. Continuance of control; order and application for review by the committing court.
14. Action of committing court upon application for review; reasons for continuance of control by the board.
15. Review by court of subsequent orders of the board.
16. Appeal from judgment of committing courts.
17. Voluntary admission to diagnostic institution; treatment.
18. Conflict of provisions; effect.
19. Agency of control.
20. Separability.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be designated article six-a, to read as follows:

Section 1. *Incest and Crimes Against Nature; Commitment for Pre-Sentence Examinations.*—If a person is convicted under chapter sixty-one, article eight, section twelve or thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the court shall commit him to the West Virginia board of control for pre-sentence social, physical and mental examinations. The court and all public officials shall make available to the board of control, upon its request, all pertinent data in their possession in respect to the case.

Sec. 2. *Rape and Other Sex Crimes.*—If a person is convicted under chapter sixty-one, article two, section fifteen, provided the sentence of the court is not death, or chapter sixty-one, article eight, section eleven, or section twenty-eight or under chapter forty-nine, article seven, section seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, wherein the offense under chapter forty-nine, article seven, section seven relates to sex acts, the court may commit him to the board of control for such a pre-sentence examination as the court is of the opinion that such an examination is

12 necessary and proper in the case. The court and all public
13 officials shall make available to the board of control, upon
14 its request, all pertinent data in their possession with
15 respect to the case.

Sec. 3. *Transportation*.—When the court commits a per-
2 son to the board of control in accordance with section one
3 or two for pre-sentence examinations, the court shall
4 order him conveyed by the proper county authorities to
5 some place of detention approved or established by the
6 board of control.

Sec. 4. *Report of Examination*.—Upon completion of
2 the examination but not later than sixty days after the
3 commitment order, a report of the results of the exami-
4 nation and recommendation of the board of control shall
5 be sent to the court.

Sec. 5. *Sentence Imposed*.—If it appears from such
2 reports that the board does not recommend specialized
3 treatment for the person's mental and physical aberrations,
4 the court shall order the proper county authorities to
5 bring him before the court and shall sentence him in the
6 manner provided by law or place him on probation if the
7 case warrants.

Sec. 6. *Commitment to the Board*.—If it appears from
2 said report that the board of control recommends spe-
3 cialized treatment for the person's mental or physical
4 aberrations, the court shall either order him brought
5 before the court by the proper county authorities and
6 place him on probation with the requirement as a con-
7 dition of such probation that he receives out-patient treat-
8 ment in such manner as the court shall prescribe or com-
9 mit him to the board of control under this article.

Sec. 7. *The Effect of Appeal from a Judgment of*
2 *Convictions*.—(a) The right of a convict to appeal from
3 the judgment of conviction is not affected by this article.

4 (b) If a person who has been convicted and committed
5 to the board of control appeals from a conviction the
6 execution of the commitment to the board of control shall
7 not be stayed by the appeal except as provided in para-
8 graph (c).

9 (c) If the committing court is of the opinion that the
10 appeal was taken in good faith and that the question
11 raised merits review by an appellate court, or when there
12 has been filed with the court a certificate that a judge of
13 an appellate court is of the opinion that questions have
14 been raised that merit review, the judge of the court in
15 which the person was convicted may direct that such per-
16 son be left at liberty under such conditions as in the
17 judge's opinion will insure his submission to the control
18 of the board of control at the proper time if it is deter-
19 mined on the appeal that the board is entitled to custody.

Sec. 8. *Notice of Commitments; Treatment; Transfer; Use of Other Facilities.*—(a) If a court commits a person
2 to the board of control it shall at once notify the board of
3 control of such action in writing.
4

5 (b) The board of control shall then arrange for his
6 treatment in the institution in this state best suited in
7 its judgment to care for him. It may transfer him to or
8 from any institution to provide for him according to his
9 needs and to protect the public. The board of control
10 may, irrespective of his consent, require participation by
11 him in vocational, physical, educational and correctional
12 training and activities; may require such modes of life
13 and conduct as seem best adapted to fit him for the re-
14 turn to full liberty without danger to the public; and may
15 make use of other methods of treatment and any treat-
16 ment conducive to the correction of the person and to
17 the prevention of future violations of law by him.

18 (c) The board of control may make use of law enforce-
19 ment, detention, parole, medical psychiatry, educational,
20 correctional, segregative and other facilities, institutions
21 and agencies, public or private, within the state.

22 (d) No person placed in an institutional agency may be
23 released therefrom except to the board of control or after
24 approval of such release by the board of control.

Sec. 9. *Periodic Examinations.*—The board of control
2 shall make periodic examinations of all persons within
3 its control under this article for the purpose of determin-

4 ing whether the existing orders and dispositions in indi-
5 vidual cases should be modified or continued in force.
6 These examinations may be made as frequently as the
7 board of control considers desirable and shall be made
8 with respect to every person at intervals not exceeding
9 one year. The board of control shall keep written records
10 of all examinations and conclusions predicated thereon,
11 and of all orders concerning the disposition or treatment
12 of every person under its control. Failure of the board of
13 control to examine a person committed to it or to make
14 periodic examinations shall not entitle him to a discharge
15 from the control of the board of control, but shall entitle
16 him to petition the committing court for an order of dis-
17 charge and the court shall discharge him unless it appears
18 in accordance with section thirteen that there is necessity
19 for further control.

Sec. 10. *Parole.*—Any person committed as provided
2 in this article may be paroled if it appears to the satis-
3 faction of the board of control, after recommendation by a
4 special review board of five members, appointed by the
5 board of control, a majority of the members of which shall
6 not be connected with the board of control, and two of
7 whom shall be qualified psychiatrists, that he is capable
8 of making acceptable adjustment in society. The board of
9 control may recommend to the board of probation and
10 parole regulations for parole, revocation of parole and
11 supervision of parolees. The parolee, however, will be
12 amenable to the orders, directives and control of the board
13 of probation and parole while he is paroled and in the
14 event his parole is revoked, he will be recommitted to
15 the custody of the board of control.

Sec. 11. *Duration of Control.*—The board of control shall
2 keep every person committed to it under this article under
3 its control and shall retain him, subject to the limitations
4 of section twelve, under supervision and control, so long
5 as in its judgment such control is necessary for the pro-
6 tection of the public. The board of control shall discharge
7 any such person as soon as in its opinion there is reason-
8 able probability that he can be given full liberty without
9 danger to the public, but no person convicted of a felony

10 shall, without the written approval of the committing
11 court, be discharged.

Sec. 12. *Termination of Control.*—Every person com-
2 mitted to the board of control who has not been discharged
3 from its control as provided in section eleven, shall be
4 discharged at the expiration of the maximum term pre-
5 scribed by law for the offense for which he was convicted
6 or the expiration of one year, whichever is the greater,
7 unless the board of control has previously thereunto made
8 an order directing that he remain subject to its control
9 for a longer period and has applied to the committing
10 court for a review of said order as provided in section
11 thirteen.

Sec. 13. *Continuance of Control; Order and Application*
2 *for Review by the Committing Court.*—If the board of
3 control is of the opinion that discharge of a person from
4 its control at the time provided in section twelve would
5 be dangerous to the public for reasons set forth in section
6 fourteen, it shall make an order directing that he remain
7 subject to its control beyond that period; and shall make
8 application to the committing court for a review of that
9 order at least ninety days before the time of discharge
10 stated.

Sec. 14. *Action of Committing Court Upon Application*
2 *for Review; Reasons for Continuance of Control by the*
3 *Board.*—(a) If the board of control applies to the com-
4 mitting court for the review of an order as provided in
5 section thirteen, the court shall notify the person whose
6 liberty is involved, and, if he is not sui juris, his parent
7 or guardian as practicable, of the application, and shall
8 afford him opportunity to appear in court with counsel
9 and of process to compel the attendance of witnesses and
10 the production of evidence. He may have a doctor or
11 psychiatrist of his own choosing examine him in the
12 institution to which he is confined or at some suitable
13 place designated by the board of control. If he is unable
14 to provide his own counsel, the court shall appoint counsel
15 to represent him. He shall not be entitled to a trial by
16 jury.

17 (b) If, after a hearing, the court finds that discharge
18 from the control of the board of control of the person to
19 whom the order applies would be dangerous to the public
20 because of the person's mental or physical deficiency, dis-
21 order or abnormality the court shall confirm the order. If
22 the court finds that discharge from the control of the board
23 of control would not be dangerous to the public for the
24 causes stated, the court shall order that he be discharged
25 from the control of the board of control at the time stated
26 in the original commitment.

Sec. 15. *Review by Court of Subsequent Orders of the*
2 *Board.*—(a) When an order of the board of control is
3 confirmed as provided in section fourteen, the control of
4 the board of control over the person shall continue, but
5 unless he is previously discharged, the board shall within
6 five years after the date of such confirmation make a new
7 order and a new application for review thereof in accord-
8 ance with this article. Such orders and applications may
9 be repeated as often as in the opinion of the board of
10 control it may be necessary for the protection of the public.

11 (b) Every person shall be discharged from the control
12 of the board of control at the termination of the periods
13 stated in paragraph (a) of this section unless the board of
14 control has previously acted therein as required, and shall
15 be discharged if the court fails to confirm the order as
16 provided in section fourteen.

Sec. 16. *Appeal from Judgment of Committing Courts.*—
2 If under the provisions of this article the court affirms
3 an order of the board of control, the person whose liberty
4 is involved may appeal to the proper appellate court for
5 a reversal or modification of the order. The appeal shall
6 be taken in the manner provided by law for appeals to
7 said court from the judgment of an inferior court.

Sec. 17. *Voluntary Admission to Diagnostic Institution;*
2 *Treatment.*—Any person believing himself to be afflicted
3 by a physical or mental condition which may result in
4 sexual action dangerous to the public may apply upon
5 forms prescribed by the board for voluntary admission
6 to some institution which provides diagnosis for such

7 persons. If the application is approved and he is admitted
8 by the board of control, he shall be given a complete
9 physical and mental examination. If it appears upon the
10 examination that he is afflicted by a physical or mental
11 condition that may prove dangerous to the public, such
12 fact shall be certified to him and to the board of control.
13 If he desires treatment, he may apply for admission to
14 an institution designated by the board of control and upon
15 approval of his application, he may be received in the
16 designated institution and shall there receive the treat-
17 ment indicated by his condition. If he is able to defray
18 all or a part of the cost of his care and treatment, he shall
19 be required to do that. If he desires to leave the institu-
20 tion he must give five days' written notice to the superin-
21 tendent of the institution of his intention to leave. The
22 board may provide out-patient treatment for him at his
23 expense: *Provided, however,* That this section shall not
24 apply to any person making application hereunder who,
25 at the time of making such application, is charged with,
26 whether by indictment or otherwise, any crime mentioned
27 in sections one and two of this article.

Sec. 18. *Conflict of Provisions; Effect.*—All statutes con-
2 flicting with this article are superseded to the extent of
3 the conflict and the provisions of this article shall prevail
4 over conflicting provisions heretofore enacted.

Sec. 19. *Agency of Control.*—Wherever herein the board
2 of control is referred to, the said agency dealing with
3 mental health, in the event of the establishment of another
4 agency to deal with mental health and related condi-
5 tions, is intended; and such agency shall be endowed with
6 the responsibilities hereinabove vested in the board of
7 control.

Sec. 20. *Separability.*—The provisions of this article are
2 separable and if any provision shall be held unconstitu-
3 tional, such decision shall not affect the remainder of this
4 article.

CHAPTER 44

(Senate Bill No. 302—Originating in the Senate
Committee on the Judiciary)

AN ACT to amend article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three, relating to the offense of soliciting of advertising any debt pooling or similar plan or charging therefor any fee in excess of two per centum of money collected pursuant to such plan and prescribing penalties for the commission of such offense.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 10. Crimes Against Public Policy.

Section

23. Debt pooling.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-three, to read as follows:

Section 23. *Debt Pooling.*—It shall be unlawful for any
2 person, firm, corporation or voluntary association to so-
3 licit in any manner the rendering of advice and services
4 of any and every kind whatsoever to a debtor in connec-
5 tion with a debt pooling plan or other similar plan pur-
6 suant to which the debtor deposits funds for the purpose
7 of distributing such funds among his creditors. It shall
8 further be unlawful for any person, except licensed at-
9 torneys, firm, corporation or voluntary association ren-
10 dering such advice and services in a lawful manner to
11 make any charge therefor, by way of fee, reimbursement
12 of costs or otherwise, in excess of an amount equal to two

13 per centum of the total amount of money collected pur-
14 suant to such plan. Any person, whether acting as agent
15 or otherwise, violating any provision of this section shall
16 be guilty of a misdemeanor, and, upon conviction, shall
17 be fined not less than one hundred dollars nor more than
18 two hundred fifty dollars, or confined in jail for not less
19 than thirty days nor more than sixty days, or both.
20 Justices of the peace shall have concurrent jurisdiction
21 of offenses under this section with other competent courts.

CHAPTER 45

(House Bill No. 326—By Mr. Chilton)

AN ACT to amend article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four, relating to the treatment of blind persons accompanied by a dog guide in places of public accommodation.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 10. Crimes Against Public Policy.

Section

24. Treatment of blind persons accompanied by a dog guide in places of public accommodation; penalty.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-four, to read as follows:

Section 24. *Treatment of Blind Persons Accompanied by a Dog Guide in Places of Public Accommodation; Penalty.*—It shall be unlawful for any owner, lessee,

4 proprietor, manager, superintendent, agent or employee
5 of any place of public accommodation, amusement
6 or recreation, including but not limited to any inn, hotel,
7 restaurant, eating house, barber shop, billiard parlor,
8 store, public conveyance on land or water, theatre, motion
9 picture house, public educational institution or elevator,
10 to refuse to permit a blind person to enter such place or
11 to make use of the accommodations available, for the
12 reason that such blind person is being led by a dog guide:
13 *Provided, however,* That such dog guide is wearing a
14 harness: *And provided further,* That such blind person
15 shall first have presented for inspection credentials issued
16 by an accredited school for training dog guides.

17 Any person who shall violate this section shall be guilty
18 of a misdemeanor, and upon conviction shall be fined an
19 amount not to exceed fifty dollars.

CHAPTER 46

(House Bill No. 232—By Mr. Bachmann and Mr. Moreland)

AN ACT to amend and reenact section seventeen, article three, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to verdicts jury may find in prosecution for larceny.

[Passed February 20, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 3. Trial of Criminal Cases.

Section

17. Verdicts jury may find in prosecution for larceny.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article three, chapter sixty-two of the code of West Virginia one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 17. *Verdicts Jury May Find in Prosecution for Larceny.*—In a prosecution for grand larceny, if it be found that the thing stolen is of less value than fifty dollars, the jury may find the accused guilty of petit larceny, except in cases where it is otherwise provided; and in a prosecution for petit larceny, though the thing stolen be of the value of fifty dollars or more, the jury may find the accused guilty; and in either case he shall be sentenced for petit larceny.

CHAPTER 47

(House Bill No. 74—By Mr. Stalnaker)

AN ACT to amend article eight, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven, relating to court costs incurred in prosecution of convicts.

[Passed February 8, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 8. Crimes by and Proceedings Against Convicts.

Section

7. Court costs incurred in prosecution of convicts.

Be it enacted by the Legislature of West Virginia:

That article eight, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven, to read as follows:

Section 7. *Court Costs Incurred in Prosecution of Convicts.*—All taxable court costs incurred in the prosecution of a convict for any crime committed by such person while confined in the West Virginia penitentiary, West Virginia medium security prison, or the West Virginia state prison

6 for women or in any other penal institution of the state of
7 West Virginia, or in the custody of an officer thereof,
8 or for the crime of escaping from any of such institutions,
9 or such custody, or for any crime committed while at
10 large after escaping from any such institution, or such
11 custody, shall be paid out of the annual state appropria-
12 tion for "criminal charges," after such are certified by the
13 circuit court of the appropriate county and approved by
14 the board of control.

CHAPTER 48

(Senate Bill No. 67—By Mr. Martin)

AN ACT to amend and reenact section two, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eligibility for probation.

[Passed February 27, 1957; in effect from passage. Approved by the Governor.]

Article 12. Probation and Parole.

Section

2. Eligibility for probation.

Be it enacted by the Legislature of West Virginia:

That section two, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2. *Eligibility for Probation.*—All persons who
2 have not been previously convicted of a felony within
3 five years from the date of the felony for which they are
4 charged, and who are found guilty of or plead guilty to
5 any felony, the maximum penalty for which is less than
6 life imprisonment, and all persons whether previously
7 convicted or not, who are found guilty of or plead guilty

8 to any misdemeanor, shall be eligible for probation, not-
9 withstanding the provisions of sections eighteen and
10 nineteen, article eleven, chapter sixty-one of this code.

CHAPTER 49

(Senate Bill No. 128—By Mr. Moats and Mr. Carrigan)

AN ACT to amend and reenact section five, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to probation officers.

[Passed February 28, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 12. Probation and Parole.

Section

5. Probation officers.

Be it enacted by the Legislature of West Virginia:

That section five, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 5. *Probation Officers.*—The judge of any court
2 actively exercising jurisdiction in criminal cases and hav-
3 ing authority to place offenders on probation is author-
4 ized to appoint a court or county probation officer and a
5 clerical assistant to serve during the pleasure of the ap-
6 pointing judge, and in addition in counties having a popu-
7 lation of more than one hundred fifty thousand, such
8 judge is authorized to appoint an assistant court or county
9 probation officer: *Provided*, That the appointing judge
10 shall first obtain the approval of the county court or the
11 county courts in his judicial circuit of the expenses to
12 be incurred and the salary or salaries to be paid the court
13 or county probation officer and clerical assistants, which
14 approval shall be discretionary with said county court

15 or courts and shall be required before any appointment
16 made hereunder becomes effective.

17 The appointment of a court or county probation officer,
18 assistant court or county probation officer and clerical
19 assistant shall be in writing and entered on the order
20 book of the court by the judge making such appointment
21 and a copy of said order of appointment shall be de-
22 livered to the county court of the county in which said
23 court or county probation officer, assistant court or
24 county probation officer and clerical assistant shall serve.
25 The said order of appointment shall state the monthly
26 salary fixed by said judge, to be paid the court or county
27 probation officer, assistant court or county probation of-
28 ficer or clerical assistant so appointed. A court or county
29 probation officer shall receive for his services a monthly
30 salary of not less than three hundred nor more than five
31 hundred dollars per month; an assistant court or county
32 probation officer shall receive for his services a monthly
33 salary of not less than three hundred and not more than
34 four hundred dollars per month. A clerical assistant shall
35 receive for his services not to exceed two hundred dol-
36 lars per month. The county court shall make provisions
37 for payment and pay monthly the salary of the court or
38 county probation officer, assistant court or county proba-
39 tion officer and clerical assistant as designated in the
40 order of appointment.

41 The county court shall provide adequate office space,
42 equipment and supplies for the court or county probation
43 officer, assistant court or county probation officer and
44 clerical assistant, to be approved by the appointing judge.
45 The county court shall reimburse a court or county proba-
46 tion officer and an assistant court or county probation
47 officer for all expenses actually and necessarily incurred
48 in line of duty in the field.

49 No judge shall appoint any court or county probation
50 officer, assistant court or county probation officer or cleri-
51 cal assistant who is related to him either by consanguinity
52 or affinity.

53 A judge of a circuit court whose circuit comprises more
54 than one county, having authority to appoint a court or

55 county probation officer, may appoint a court or county
56 probation officer and a clerical assistant in each county
57 of such circuit, or may appoint the same person as a court
58 or county probation officer and also the same person as a
59 clerical assistant in two or more of such counties.

60 When a judge has appointed a court or county proba-
61 tion officer and a clerical assistant to serve in a judicial
62 circuit including more than one county, the salary and
63 expenses of such appointees shall be contributed by each
64 county sharing in the services of such appointees in the
65 proportion agreed upon by such counties, if they agree,
66 otherwise in the proportion of the population in the
67 counties derived from the last United States census.

68 In lieu of, or in addition to, the court or county proba-
69 tion officers, assistant court or county probation officers
70 and clerical assistants provided for in this section, the
71 judge may avail himself of the services of state probation
72 and parole officers; and any such services which may be
73 provided to the court or judge by said state probation and
74 parole officers, shall be rendered at no additional cost to
75 any court or judge so using them. The director of proba-
76 tion and parole may assist any court or county probation
77 officer, upon request, with information relative to pro-
78 cedure, printed forms, and technique applicable to proba-
79 tion methods.

80 Nothing contained in this section shall in any manner
81 alter, modify, affect or supersede the appointment, tenure
82 or salary of any probation officer appointed by any court
83 under any special act of the Legislature heretofore or
84 hereafter enacted.

CHAPTER 50

(House Bill No. 124—By Mr. Powell)

AN ACT to amend and reenact section five-a, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to pro-

bation officers of the second judicial circuit, third judicial circuit, fourteenth judicial circuit and of Wayne County; salary and expenses.

[Passed March 1, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 12. Probation and Parole.

Section

5-a. Probation officers of second judicial circuit, third judicial circuit, fourteenth judicial circuit and of Wayne county; salary and expenses.

Be it enacted by the Legislature of West Virginia:

That section five-a, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 5-a. *Probation Officers of Second Judicial Circuit, Third Judicial Circuit, Fourteenth Judicial Circuit and of Wayne County; Salary and Expenses.*—The judge of the circuit courts of the second judicial circuit, third judicial circuit, fourteenth judicial circuit and of the circuit court of Wayne county in the twenty-fourth judicial circuit each is authorized to appoint a court probation officer to serve during the pleasure of the appointing judge, without first obtaining approval of the county courts of the counties of said judicial circuits and of Wayne county, respectively, as provided in section five of the article. Such appointment shall be effective upon the entry of the appointment order in the court order book. A certified copy of said order shall be delivered to the county court of each of the counties concerned and said county courts respectively, shall arrange for and appropriate funds for payment of and shall pay the salary and expenses of such probation officer in a manner consistent with contribution provisions of said section five. The probation officers so appointed shall have and may exercise all of the powers and perform all the duties and services of probation officers as provided in this article.

CHAPTER 51

(House Bill No. 330—By Mr. Schupbach)

AN ACT to amend article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-a, relating to probation and parole.

[Passed March 9, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 12. Probation and Parole.

Section

14-a. Division of employment for paroled convicts.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fourteen-a, to read as follows:

Section 14-a. *Division of Employment for Paroled Convicts.*—The board shall have authority to employ a director of employment for paroled or pardoned prisoners. It shall be the duty of the director to investigate job opportunities and to give every possible assistance in helping prisoners, eligible to be paroled or who have been granted parole under this article, to find employment.

CHAPTER 52

(Senate Bill No. 60—By Mr. Jackson, of Logan, and Mr. Bowers)

AN ACT to amend chapter five of the code of West Virginia one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article eight,

relating to the establishment in the state government of a centralized department of finance and administration, and to its powers and duties.

[Passed February 28, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 8. Department of Finance and Administration.

Section

1. Department of finance and administration; commissioner; divisions.
2. Council of finance and administration.
3. Budget division; powers and duties.
4. Central accounting division; powers and duties.
5. Purchasing division; powers and duties.
6. Personnel division; powers and duties.
7. General services division; powers and duties.
8. Authority of governor.
9. Statutory references.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article to be designated article eight, to read as follows:

Section 1. *Department of Finance and Administration; Commissioner; Divisions.*—There is hereby created in the state government a department of finance and administration and the office of commissioner of finance and administration. The commissioner shall be the chief executive officer of the department and shall be appointed by the governor by and with the advice and consent of the senate for a term of six years. The annual compensation of the commissioner shall be fixed by the governor but not in excess of ten thousand dollars. There shall be in the department of finance and administration a budget division, a central accounting division, a purchasing division, a personnel division, and a general services division. Each division shall be headed by a director, who shall be appointed by the commissioner, to serve at the will and pleasure of the commissioner.

17 The commissioner shall have control and supervision
18 of the department of finance and administration and shall
19 be responsible for the work of each of its divisions. Under
20 the control and supervision of the commissioner, each
21 director shall be responsible for the work of his division.
22 The commissioner and the directors shall have the author-
23 ity to employ such assistants as may be necessary for the
24 efficient operation of the department. The commissioner
25 and the directors shall have the authority and shall per-
26 form the duties herein specified and shall also perform
27 such other duties as the governor may by executive order
28 prescribe.

Sec. 2. *Council of Finance and Administration.*—There
2 is hereby established a council of finance and administra-
3 tion. The council shall be composed of ten members, four
4 of whom shall serve *ex officio* and six of whom shall be
5 appointed as herein provided. The *ex officio* members
6 shall be the governor, the attorney general, the state
7 treasurer, and the state auditor. From the membership
8 of the joint committee on government and finance, the
9 President of the Senate shall appoint three Senators as
10 members of the council, not more than two of whom shall
11 be members of the same political party, and the Speaker
12 of the House shall appoint three Delegates as members of
13 the council, not more than two of whom shall be members
14 of the same political party.

15 The council shall serve the department of finance and
16 administration in an advisory capacity only. It shall have
17 the authority and it shall be its duty:

18 (1) To advise with the commissioner concerning all ad-
19 ministrative rules and regulations to be issued by the
20 department.

21 (2) To advise with the commissioner as to all budget
22 proposals to be submitted to the board of public works.

23 (3) At the time of the submission of the proposed
24 budget to the board of public works, to report to the board
25 its conclusions concerning the proposed budget, and any
26 additions, modifications or adjustments that it may care
27 to suggest.

28 (4) To advise with the commissioner concerning such
29 studies of government and administration as it may con-
30 sider appropriate.

31 (5) To advise with the commissioner in the prepara-
32 tion of studies designed to provide long-term capital
33 planning and finance for state institutions and agencies.

Sec. 3. *Budget Division; Powers and Duties.*—The com-
2 missioner of finance and administration shall be *ex officio*
3 the director of the budget division. Except as otherwise
4 provided in this article, the budget division shall be
5 vested with the powers and authority, and shall perform
6 the functions and duties, heretofore granted or imposed
7 by law on the state budget office or the director of the
8 budget.

Sec. 4. *Central Accounting Division; Powers and Du-*
2 *ties.*—The central accounting division shall maintain a
3 central system of state accounts and shall be vested with
4 the powers and authority, and shall perform the func-
5 tions and duties, heretofore granted or imposed by law on
6 the director of the budget or the tax commissioner per-
7 taining to the formulation and control of accounting sys-
8 tems, or heretofore granted or imposed by law on the tax
9 commissioner pertaining to information and reports con-
10 cerning financial transactions, or heretofore granted or
11 imposed by law on the state budget office or the director
12 of the budget pertaining to requisitions for expenditures,
13 including those for the payment of personal services and
14 orders for the purchase of commodities, or heretofore
15 granted or imposed by law on the tax commissioner or
16 on the state auditor pertaining to compiling, printing, and
17 submitting reports of the financial transactions of the
18 state.

Sec. 5. *Purchasing Division; Powers and Duties.*—Ex-
2 cept as otherwise provided in this article, the purchasing
3 division shall be vested with the powers and authority,
4 and shall perform the functions and duties, heretofore
5 granted or imposed by law on the department of pur-
6 chases or the state director of purchases.

Sec. 6. *Personnel Division; Powers and Duties.*—The

2 personnel division shall be vested with the powers and
3 authority, and shall perform the functions and duties,
4 heretofore granted or imposed by law on the state budget
5 office or the director of the budget pertaining to employ-
6 ment classification and salary schedules of state person-
7 nel, except the powers, functions and services vested by
8 law in a personnel department when created and estab-
9 lished in the state government pursuant to the provisions
10 of Senate Bill No. 159 of the regular session of the Legis-
11 lature, one thousand nine hundred fifty-seven, or other
12 comparable legislation.

Sec. 7. General Services Division; Powers and Duties.—

2 The general services division shall have control of the
3 central mailing office in the capitol building, and shall be
4 vested with the powers and authority, and shall perform
5 the functions and duties, heretofore granted or imposed
6 by law on the governor pertaining to such central mailing
7 office, or heretofore granted or imposed by law on the
8 state budget office, the director of the budget, the depart-
9 ment of purchases or the director of purchases pertaining
10 to inventory and property control, or heretofore granted
11 or imposed by law on the state board of control pertain-
12 ing to the care, control and custody of the capitol build-
13 ings and grounds.

*Sec. 8. Authority of Governor.—*The governor is hereby
2 authorized to direct by executive order, not inconsistent
3 with the provisions of this article, the transfer to the de-
4 partment of finance and administration of such records
5 and equipment, the performance by the department of
6 such additional functions and duties, and the discontinu-
7 ance of such functions and duties of any other state officer
8 or agency as may be necessary to effectuate the purposes
9 of the fiscal reorganization prescribed in this article.

*Sec. 9. Statutory References.—*Whenever any statute
2 of the state refers to an officer or agency of the state
3 whose functions and duties are by this article transferred
4 to another officer or agency of the state, the reference
5 shall be understood to be made to the officer or agency,
6 as the case may be, to which the functions and duties
7 have been transferred.

CHAPTER 53

(House Bill No. 286—By Mr. Whaley)

AN ACT to amend and reenact sections one and three, article one, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the course of descent and method of partition of real estate when the owner thereof dies intestate.

[Passed February 27, 1957; in effect ninety days from passage. Approved by the Governor.]

Article I. Descent.

Section

1. Course of descent generally.
3. When parties take per capita and when per stirpes.

Be it enacted by the Legislature of West Virginia:

That sections one and three, article one, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *Course of Descent Generally.*—When any
2 person having title to any real estate of inheritance shall
3 die intestate as to such estate, it shall descend and pass
4 in parcenary to his kindred, male and female, in the
5 following course:

- 6 (a) To his children and their descendants;
- 7 (b) If there be no child, nor descendant of any child,
8 then the whole shall go to the wife or husband, as the
9 case may be;
- 10 (c) If there be no child, nor descendant of any child,
11 nor wife, nor husband, then one moiety each to the mother
12 and father; or if there be no child, nor descendant of any
13 child, nor wife, nor husband, nor mother, then the whole
14 shall go to the father; or if there be no child, nor any
15 descendant of any child, nor wife, nor husband, nor
16 father, then the whole shall go to the mother;
- 17 (d) If there be no child, nor descendant of any child,

18 nor wife, nor husband, nor mother, nor father, the whole
19 shall go to the intestate's brothers and sisters and the
20 descendants of brothers and sisters;

21 (e) And if there be no child, nor descendant of any
22 child, nor father, nor mother, nor wife or husband, nor
23 brother, nor sister, nor descendant of any brother or
24 sister, then one moiety shall go to the paternal and the
25 other to the maternal kindred in the following course:

26 (f) First to the grandfather and grandmother one-half
27 of the moiety each;

28 (g) If no grandmother one-half of the moiety to the
29 grandfather, or if no grandfather one-half of the moiety
30 to the grandmother; and in either case the other one-half
31 of the moiety, or if there be neither grandfather nor
32 grandmother the whole of the moiety, shall go to the
33 uncles and aunts on the same side, and their descendants;

34 (h) If there be no grandmother, nor such uncle, nor
35 such aunt, nor descendant of any such uncle or aunt, then
36 the whole of the moiety to the grandfather; or if there
37 be no grandfather, nor such uncle, nor such aunt, nor
38 descendant of any such uncle or aunt, then the whole of
39 the moiety to the grandmother;

40 (i) If there be no grandfather, nor grandmother, nor
41 such uncle, nor such aunt, nor descendant of any such
42 uncle or aunt, then to the great-grandfathers and great-
43 grandmothers one-fourth of the moiety each;

44 (j) If any great-grandfather or great-grandmother be
45 dead then his or her share, or the whole of the moiety
46 in case all the great-grandfathers and great-grandmothers
47 be dead, shall go to the brothers and sisters of the grand-
48 fathers and grandmothers, and the descendants of such
49 brothers and sisters of the grandfathers and grandmoth-
50 ers; and if there be no brother nor sister of any grand-
51 father or grandmother, nor the descendant of any such
52 brother or sister, then the whole of the moiety shall go
53 to such of the great-grandfathers and great-grandmothers
54 as may then be living, in equal shares, or to the survivor
55 of them;

56 (k) And so on, in like manner, in other cases without
57 end, passing to the nearest lineal ancestors, male and

58 female, and if any of them be dead his or her share, or
59 if all of them be dead the whole, to the brothers and
60 sisters of the lineal ancestors, male and female, of the
61 degree next nearer the intestate, and the descendants of
62 such brothers and sisters; and if there be no brother nor
63 sister of any lineal ancestor, male or female, of the degree
64 next nearer the intestate nor descendant of any such
65 brother or sister, then to such of the lineal ancestors in
66 this subdivision (k) first mentioned as may then be living,
67 in equal shares or to the survivor of them;

68 (l) If there be no paternal kindred the whole shall
69 go to the maternal kindred, and if there be no maternal
70 kindred the whole shall go to the paternal kindred. If
71 there be neither paternal nor maternal kindred, the whole
72 shall go to the kindred of the wife or husband of the
73 intestate in the like course as if such wife or husband
74 had survived the intestate and died entitled to the whole
75 of the estate.

Sec. 3. *When Parties Take Per Capita and When Per*
2 *Stirpes.*—Whenever the children of the intestate, or the
3 brothers and sisters of the intestate, or the uncles and
4 aunts of the intestate, or the brothers and sisters of any
5 of the intestate's lineal ancestors of the same degree, come
6 into partition, they shall take per capita, or by persons;
7 and where, a part of them being dead and a part living,
8 the descendants of those dead have right to partition,
9 such descendants shall take per stirpes, or by stocks, that
10 is to say, the shares of their deceased ancestors; but
11 whenever the persons entitled to partition, other than
12 those whose shares are definitely fixed by the statute of
13 descents, are all in the same degree of kindred to the
14 intestate, they shall take per capita or by persons.

CHAPTER 54

(House Bill No. 42—By Mr. Morgan and Mr. Young)

AN ACT to amend and reenact sections two and five, article
twenty-a, chapter nineteen of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, relating to vaccination of dogs.

[Passed February 27, 1957; in effect May 1, 1957. Approved by the Governor.]

Article 20-a. Vaccination of Dogs for Rabies.

Section

2. Vaccination of dogs.
5. Vaccine furnished by person administering same; fee.

Be it enacted by the Legislature of West Virginia:

That sections two and five, article twenty-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2. *Vaccination of Dogs.*—Whoever owns, keeps
2 or harbors a dog or dogs within the boundaries of any
3 county in the state of West Virginia shall, on or before
4 the first day of June, one thousand nine hundred fifty-
5 seven, have such dog or dogs properly vaccinated or im-
6 munized against rabies, and shall every second year there-
7 after have such dog or dogs revaccinated. After the first
8 day of June, one thousand nine hundred fifty-seven, who-
9 ever obtains an unvaccinated dog or dogs shall at once
10 have such dog or dogs properly vaccinated against rabies
11 and shall have such vaccination repeated every second
12 year: *Provided, however,* That dogs need not be vacci-
13 nated before the age of five months: *Provided further,*
14 That dogs entering the state of West Virginia temporarily
15 cannot be kept and maintained within the state of West
16 Virginia for a period of more than thirty days unless
17 properly vaccinated. Anyone owning a dog or dogs can
18 have them vaccinated by any veterinarian or person work-
19 ing with or under such veterinarian, or if there be no
20 resident veterinarian in the county, by such other quali-
21 fied person as may be appointed by the county court, who
22 shall work under the supervision of the county health
23 department.

Sec. 5. *Vaccine Furnished by Person Administering*
2 *Same; Fee.*—It shall be the duty of the veterinarian, or

3 person vaccinating each animal to furnish vaccine of a
4 type capable of establishing and maintaining immunity
5 for a period of not less than twenty-four months and
6 he shall charge and collect for his service a fee not to
7 exceed one dollar and fifty cents for each animal vacci-
8 nated.

—○—

CHAPTER 55

(House Bill No. 44—By Mr. Kessel)

AN ACT to amend and reenact sections six and ten, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to application for and issuance of marriage license.

[Passed February 19, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 1. Marriage.

Section

6. Application for license; requirements for issuance of license.
10. Endorsement and return of licenses by person solemnizing marriage; duties of clerk pertaining thereto.

Be it enacted by the Legislature of West Virginia:

That sections six and ten, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 6. *Application for License; Requirements for*
- 2 *Issuance of License.*—Every license for marriage shall be
 - 3 issued by the clerk of the county court of the county in
 - 4 which the female to be married usually resides except, in
 - 5 cases of a female who is a nonresident of the state of West
 - 6 Virginia, by the clerk of the county court of the county in
 - 7 which application is made: *Provided, however,* That such
 - 8 license shall be issued not sooner than three days after
 - 9 the filing with said clerk of a written application therefor.

10 The day upon which such application is filed shall be
11 counted as the first day, but two full days shall elapse
12 after the day of such filing before the license shall be
13 issued: *Provided, further,* That before any such license
14 is issued each applicant therefor shall file with the clerk
15 a certificate or certificates from any physician duly
16 licensed in the state, stating that each party thereto has
17 been given such examination, including a standard sero-
18 logical test, as may be necessary for the discovery of
19 syphilis, made not more than thirty days prior to the date
20 of such application, and stating that in the opinion of the
21 physician the person therein named either is not infected
22 with syphilis or, if so infected, is not in the state of the
23 disease which is or may later become communicable. Such
24 examinations and tests as are required hereunder may be
25 given as provided by section nineteen, article four, chap-
26 ter sixteen of this code.

27 The application for a marriage license shall contain a
28 statement of the full names of both parties, their respec-
29 tive ages and their places of birth and residence. It shall
30 be signed by one or the other of the parties to the contem-
31 plated marriage, and shall be verified by such party to be
32 true to the best of his or her knowledge and belief; and
33 shall be recorded in the register of marriages provided for
34 in section eleven of this article. The date of its filing shall
35 be noted in said register, which notation or a certified copy
36 thereof shall be legal evidence of the facts therein con-
37 tained.

38 To the extent otherwise provided by section six-c of
39 this article, the provisions of this section shall not apply.
40 No application for license shall be received nor any license
41 issued on any Sunday, or before the hours of eight o'clock
42 A. M. and after five o'clock P. M. on any week day.

2 *Sec. 10. Endorsement and Return of Licenses by Person*
3 *Solemnizing Marriage; Duties of Clerk Pertaining There-*
4 *to.*—Every person solemnizing a marriage shall take up
5 the license authorizing such marriage, and on or before
6 the fifth day of each month shall forward to the county
7 clerk issuing such license the original of all such licenses
in his possession, with an endorsement thereon of the fact

8 of such marriage and the time and place of celebrating
9 the same. In the event that the marriage authorized by
10 such license is not solemnized within sixty days from the
11 date of its issuance, then such license shall become null
12 and void. Should the county clerk not receive the said
13 original within sixty days after its issuance, he shall by
14 regular mail notify either of the applicants of that fact.

CHAPTER 56

(Senate Bill No. 337—Originating in the
Senate Committee on the Judiciary)

AN ACT to amend and reenact sections four and twenty-one, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article two by adding thereto a new section, designated section thirty-two, all relating to grounds for and procedures concerning divorce.

[Passed March 7, 1957; in effect from passage. Approved by the Governor.]

Article 2. Divorce.

Section

4. Grounds for divorce from bond of matrimony.
21. Former name of wife; restoration.
32. Answer seeking affirmative relief or cross-bill; proceedings thereon; time allowed after filing.

Be it enacted by the Legislature of West Virginia:

That sections four and twenty-one, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said article two be further amended by adding thereto a new section, designated section thirty-two, all to read as follows:

- Section 4. *Grounds for Divorce from Bond of Matrimony.*—A divorce from the bond of matrimony may be
2
3 decreed:

- 4 (a) For adultery; or
- 5 (b) When either of the parties subsequent to the mar-
6 riage has, in or out of this state, been sentenced to im-
7 prisonment for the commission of a crime which under
8 the laws of this state is a felony, and such sentence has
9 become final, if suit for divorce be commenced while such
10 party is actually imprisoned under such sentence, or be-
11 fore the parties have again cohabited; and no pardon
12 granted to the party so sentenced, if suit for divorce shall
13 have been commenced before the granting of such par-
14 don, shall restore such party to his or her conjugal rights;
15 or
- 16 (c) To the party abandoned, when either party wil-
17 fully abandons or deserts the other for one year; or
- 18 (d) For cruel or inhuman treatment, or reasonable ap-
19 prehension of bodily hurt, and a charge of prostitution
20 made by the husband against the wife shall be deemed
21 cruel treatment within the meaning of this paragraph;
22 cruel and inhuman treatment shall also be deemed to
23 exist when the treatment by one spouse of another, or
24 the conduct thereof, is such as to destroy or tend to destroy
25 the mental or physical well-being, happiness and welfare
26 of the other and render continued cohabitation unsafe or
27 unendurable; or
- 28 (e) For habitual drunkenness of either party subse-
29 quent to the marriage; or
- 30 (f) For the addiction of either party, subsequent to
31 the marriage, to the habitual use of opium, morphine,
32 cocaine or other like drug.

Sec. 21. *Former Name of Wife; Restoration.*—The court,
2 upon granting a divorce to the husband or wife, may, if
3 there are no children of such marriage, allow the wife
4 to resume her maiden name, or the name of a former hus-
5 band if she has any living child or children, then under
6 the age of twenty-one years and unmarried, by her mar-
7 riage to him.

Sec. 32. *Answer Seeking Affirmative Relief or Cross-
2 Bill; Proceedings Thereon; Time Allowed After Filing.*—

3 The defendant, in any suit for divorce, may file an answer
4 seeking affirmative relief, or a cross-bill, and said suit
5 shall thereafter be proceeded with to final adjudication,
6 without remanding the same to rules, and without the
7 service of further process upon the adverse party: *Pro-*
8 *vided, however,* That such adverse party shall have a
9 period of thirty days from and after the date of the filing
10 of any such answer seeking affirmative relief or cross-
11 bill for pleading thereto, but may, by order entered of
12 record, waive any part or all of such period of time for
13 pleading and may thereby expedite proceedings in the
14 suit.

CHAPTER 57

(House Bill No. 295—By Mr. Brotherton)

AN ACT to amend and reenact section four, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to decree and birth certificate procedures and requirements in adoption cases.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 4. Adoption.

Section

4. Recording decrees and birth certificates; duties of clerks and registrar; fees.

Be it enacted by the Legislature of West Virginia:

That section four, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 4. *Recording Decrees and Birth Certificates; Duties of Clerks and Registrar; Fees.*—The decree shall be

3 recorded in a book kept for that purpose, and the clerk
4 shall receive the same fees as in other cases in the circuit
5 court or juvenile court, as the case may be. All records of
6 proceedings in adoption cases and all papers and records
7 relating to such proceedings shall be kept in a sealed file
8 and shall not be open to inspection or copy by anyone
9 other than the parties of record or their legal representa-
10 tives, except upon court order for good cause shown. No
11 person in charge of adoption records shall disclose the
12 names of the adopting parent or parents or adopted child
13 except by court order. Immediately upon the entry of
14 such a decree of adoption, the court shall direct the clerk
15 thereof forthwith to make and deliver to the state registrar
16 of vital statistics a certificate under the seal of said court,
17 showing:

18 (1) The date and place of birth of the adoptee, if known;

19 (2) The names of the natural parents of the adoptee,
20 if known;

21 (3) The name by which said child has previously been
22 known;

23 (4) The names and addresses of the adopting parents;

24 (5) The name by which the child is to be thereafter
25 known; and

26 (6) Such other information from the record of said
27 adoption proceedings as may be required by the law of
28 this state relating to vital statistics and as may enable the
29 state registrar of vital statistics to carry out the duty
30 imposed upon him by this section.

31 Upon receipt of said certificate, the said registrar of
32 vital statistics shall forthwith issue and deliver by mail
33 to the adopting parents at their last known address and
34 to the clerk of the county court of the county wherein
35 such decree of adoption was entered a birth certificate in
36 the form required by law, except that the name of the
37 adoptee shown in said certificate shall be the name given
38 him by the decree of adoption. Such county court clerk
39 shall record such birth in the manner provided by chapter
40 sixteen, article five, section nineteen of this code.

CHAPTER 58

(House Bill No. 190—By Mr. Charnock)

AN ACT to amend article seven, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to blood grouping tests in proceedings for the maintenance of illegitimate children.

(Passed February 19, 1957; in effect ninety days from passage. Approved by the Governor.)

Article 7. Maintenance of Illegitimate Children.

Section

8. Defendant may request blood grouping tests.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eight, to read as follows:

Section 8. *Defendant May Request Blood Grouping Tests.*—The court, or judge thereof in vacation, on motion of the defendant, if seasonably made, shall order the mother, her child and the defendant to submit to one or more blood grouping tests by a person duly qualified to make such tests to determine whether or not the defendant can be excluded as being the father of the child, and the results of such tests may be received in evidence but only in cases where definite exclusion is established. The cost and expense of making such tests shall be borne by the defendant.

CHAPTER 59

(Senate Bill No. 96—By Mr. Martin)

AN ACT to amend and reenact section fifteen, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the report of the state board of education to the governor and Legislature.

[Passed March 2, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 2. State Board of Education.

Section

15. Report to governor and Legislature.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 15. *Report to Governor and Legislature.*—On
- 2 or before the first day of November preceding each odd-
 - 3 year regular session of the Legislature, the state board,
 - 4 through the state superintendent, shall make to the gov-
 - 5 ernor and to the Legislature a full report concerning the
 - 6 public schools and the educational institutions under its
 - 7 control and management, together with its recommenda-
 - 8 tions in respect to needed legislation.

CHAPTER 60

(Senate Bill No 25—By Mr. Traubert and Mr. McCulty)

AN ACT to amend and reenact section sixteen, article two, chapter eighteen of the code of West Virginia, one thou-

sand nine hundred thirty-one, as amended, relating to the state camp and conference center at Ripley, West Virginia, so as to authorize county courts to erect and equip buildings at the camp and conference center.

[Passed January 29, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 2. State Board of Education.

Section

16. Establishment and operation of a state camp and conference center; payment of expense; gifts and donations; county courts may erect and equip buildings.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 16. *Establishment and Operation of a State
2 Camp and Conference Center; Payment of Expense; Gifts
3 and Donations; County Courts May Erect and Equip
4 Buildings.*—For the purpose of developing competent
5 leadership, developing character, training for useful citi-
6 zenship, fostering patriotism, and of providing and en-
7 couraging the development of organized recreational ac-
8 tivities for Future Farmers of America and Future Home-
9 makers of America members, and other youth and adult
10 groups, a camp and conference center is hereby estab-
11 lished.

12 The West Virginia board of education is hereby author-
13 ized to secure a site for such camp and conference center
14 at some suitable place and provide the necessary build-
15 ings and equipment therefor.

16 Such camp and conference center shall be operated by
17 the division of vocational education of the West Virginia
18 board of education. Such camp and conference center
19 may be rented for educational purposes only and the rent
20 received therefor shall be deposited in the state treasury
21 and paid out on requisition of the division of vocational

22 education of the West Virginia board of education for the
23 maintenance and operation of such camp and conference
24 center.

25 Any appropriations now or hereafter made by the Leg-
26 isature to carry out the provisions and purposes of this
27 section shall be expended through the West Virginia
28 board of education.

29 The West Virginia board of education is hereby author-
30 ized and empowered to receive and use such gifts and
31 donations of money, land, buildings, materials, equip-
32 ment, supplies, and labor, either from public or private
33 sources, as may be offered unconditionally or under such
34 conditions as in the judgment of the West Virginia board
35 of education are proper and consistent with the provisions
36 of this section.

37 All the money received as gifts and donations by the
38 West Virginia board of education shall be deposited in
39 the state treasury to be used by the said board of educa-
40 tion in establishing and maintaining the aforesaid camp
41 and conference center. A report of all gifts and donations
42 offered and accepted, together with the names of the
43 donors and the amounts contributed by each and all dis-
44 bursements therefrom shall be submitted annually to the
45 governor of the state by the West Virginia board of edu-
46 cation.

47 The county court of any county may appropriate and
48 expend money from the general county fund, or from any
49 special fund available for such purpose, to erect and
50 equip a cottage or county building on such camp and con-
51 ference center property.

— c —

CHAPTER 61

(House Bill No. 333—By Mr. Schupbach and Miss Hallanan)

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto five new sections, designated

sections seventeen to twenty-one, inclusive, relating to automobile driver training and education.

[Passed March 9, 1957; in effect from passage. Approved by the Governor.]

Article 2. State Board of Education.

Section

17. Automobile driver education and training; aims and purposes.
18. State board of education to adopt rules and regulations.
19. Automobile driver training; establishment and maintenance of course; who may enroll.
20. Expenditure of school funds.
21. Automobile liability insurance.

Be it enacted by the Legislature of West Virginia:

That article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto five new sections, designated sections seventeen to twenty-one, inclusive, to read as follows:

Section 17. *Automobile Driver Education and Training;*
 2 *Aims and Purposes.*—The aims and purposes of automo-
 3 bile driver education shall be to develop a knowledge of
 4 these provisions of chapter seventeen-c of this code and
 5 other laws of this state relating to the operation of motor
 6 vehicles, a proper acceptance of personal responsibility in
 7 traffic, and a true appreciation of the causes, seriousness
 8 and consequence of traffic accidents. The aims and pur-
 9 poses of automobile driver training shall be to develop
 10 the knowledge, attitudes, habits and skills necessary for
 11 the safe operation of motor vehicles, including behind-
 12 the-wheel driving and observation in a dual control auto-
 13 mobile.

Sec. 18. *State Board of Education to Adopt Rules and*
 2 *Regulations.*—The state board of education shall, with
 3 the advice of the state superintendent of schools and the
 4 superintendent of the department of public safety, adopt
 5 reasonable rules and regulations governing the establish-
 6 ment, conduct and scope of automobile driver education
 7 and automobile driver training for use in the public, pri-

8 vate, parochial and denominational high schools located
9 within this state, subject to the requirements and excep-
10 tions set forth in this article. The first rules and regula-
11 tions required by this section shall be adopted on or before
12 July first, one thousand nine hundred fifty-seven.

Sec. 19. *Automobile Driver Training; Establishment and*
2 *Maintenance of Course; Who May Enroll.*—The state su-
3 perintendent of schools may promote and direct the estab-
4 lishment and maintenance of elective courses of instruc-
5 tion in automobile driver training in the public high
6 schools in accordance with the rules and regulations of the
7 state board adopted pursuant to section eighteen of this
8 article. Directors, trustees, or other persons having control
9 or authority over private, parochial or denominational
10 high schools, who establish and maintain such courses in
11 the schools under their control or supervision, shall com-
12 ply with the rules and regulations of the state board
13 adopted pursuant to section eighteen of this article.

14 In the case of pupils under the age of sixteen, instruction
15 shall be limited to the classroom. In case of pupils sixteen
16 years and over, the instruction may include practical
17 training in the operation of motor vehicles on the public
18 streets and highways, and the pupil need not have a
19 learner's permit as required by chapter seventeen-b, arti-
20 cle two, section five of this code, if he is operating a dual
21 control automobile and a duly appointed instructor is
22 actually occupying a seat beside the pupil.

23 No pupil shall be permitted to enroll in an automobile
24 driver training course unless such student is presently
25 enrolled in a course in automobile driver education or
26 has satisfactorily completed such course.

Sec. 20. *Expenditure of School Funds.*—County boards
2 of education, subject to the rules and regulations of the
3 state board of education, may expend school funds to
4 maintain and repair vehicles used for instructional pur-
5 poses, to purchase fuel, lubricants, parts and accessories
6 therefor, to pay the compensation of teachers or instructors
7 and to procure automobile insurance, where such expendi-
8 tures are for the purpose of establishing or maintaining

9 automobile driver training courses pursuant to this article.
10 These expenditures, including compensation of teachers
11 or instructors, may be made over a period of twelve
12 months.

13 Each county board shall receive from funds specially
14 appropriated for such courses a sum which shall be pro-
15 portionate to the total amount available for distribution
16 to all county boards in the state in the ratio which the
17 number of pupils who satisfactorily complete such
18 courses in the county bears to the total number of pupils
19 who satisfactorily complete such courses in all public high
20 schools within the state: *Provided*, That the payment
21 shall not exceed the sum of twenty dollars for each such
22 pupil per school year.

Sec. 21. *Automobile Liability Insurance*.—County
2 boards of education shall procure or require automobile
3 liability insurance in such amounts as the state board of
4 education shall prescribe covering motor vehicles owned
5 or operated for automobile driver training courses. The
6 board having control of the financial and business affairs
7 of any state educational institution which offers such
8 course or courses for instruction in automobile driver
9 training shall procure or require automobile liability
10 insurance in like amounts covering motor vehicles owned
11 or operated for any such course. Such insurance shall be
12 against any liability arising out of the use of such vehicles
13 in connection with such courses.

CHAPTER 62

(House Bill No. 223—By Mr. Vennari and Mr. Floyd)

AN ACT to amend and reenact section one, article four, chapter
eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the election
and term of the county superintendent of schools.

[Passed March 9, 1957; in effect from passage. Approved by the Governor.]

Article 4. County Superintendent of Schools.**Section**

1. Election and term.
-

Be it enacted by the Legislature of West Virginia:

That section one, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *Election and Term.*—The superintendent
2 shall be elected by the board to serve for a term of not
3 less than one, nor more than four years. At the expira-
4 tion of the term or terms for which he shall have been
5 elected, each superintendent shall be eligible for reelec-
6 tion for additional terms of not less than one, nor more
7 than four years: *Provided, however,* That at the expira-
8 tion of his term or terms of service he shall be given the
9 status of teacher in the system unless dismissed for statu-
10 tory reasons. Such election shall be held on or before
11 the first day of May and the person so elected shall take
12 office on the first day of July following. A superintendent
13 who fills a vacancy caused by an incomplete term shall
14 be appointed to serve until the following first day of July.
15 The president of the board, immediately upon the election
16 of the superintendent, shall certify the election to the
17 state superintendent of schools. The superintendent in
18 office on the effective date of this act shall continue in
19 office until the expiration of his term.

C

CHAPTER 63

(House Bill No. 113—By Mr. Vennari and Mr. Floyd)

AN ACT to amend and reenact section nine, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to traveling expenses of county superintendents.

[Passed February 11, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 4. County Superintendent of Schools.**Section**

9. Reimbursement for traveling expenses; voucher.

Be it enacted by the Legislature of West Virginia:

That section nine, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 9. *Reimbursement for Traveling Expenses;*
2 *Voucher.*—The board may reimburse the superintendent
3 from the current expense fund for traveling expenses
4 incurred in the performance of his duties in an amount
5 not to exceed one thousand dollars per year. But no allow-
6 ance shall be made except upon sworn itemized state-
7 ments.

CHAPTER 64

(Senate Bill No. 61—By Mr. Taylor and Mr. Bowers)

AN ACT to amend and reenact section two, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to filling vacancies on county boards of education.

[Passed February 12, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 5. District Board of Education.**Section**

2. Filling vacancies.

Be it enacted by the Legislature of West Virginia:

That section two, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2. *Filling Vacancies.*—The board shall, by appointment, fill within thirty days any vacancy that occurs in its membership. Such appointments shall continue until the next primary or general election, whichever may first occur, when the voters shall elect a successor for the unexpired term. In the event that the board does not fill the vacancy within thirty days, the state superintendent of schools shall appoint a person to fill the vacancy: *Provided, however,* That should a vacancy occur less than forty-two days next preceding any primary or general election, such vacancy shall not be filled by election until the next succeeding primary or general election, whichever may first occur.

CHAPTER 65

(Senate Bill No. 8—By Mr. Traubert and Mr. Bowers)

AN ACT to amend and reenact section four, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to time of appointment of teachers by the school board and compensation of members thereof.

[Passed February 21, 1957; in effect from passage. Approved by the Governor.]

Article 5. District Board of Education.

Section

4. Meetings; quorum, employment and assignment of teachers; compensation of members.

Be it enacted by the Legislature of West Virginia:

That section four, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 4. *Meetings; Quorum, Employment and Assignment of Teachers; Compensation of Members.*—The board

3 shall meet on the first Monday of July and the first and
4 third Tuesdays in August and at such other times as the
5 board may fix upon its records. At any meeting as author-
6 ized above and in compliance with the provisions of arti-
7 cle four of this chapter, the board may employ such
8 qualified teachers, or those who will qualify by the time
9 of entering upon their duties, necessary to fill existing or
10 anticipated vacancies for the current or next ensuing
11 school year. On or before the first Monday in May the
12 superintendent shall furnish to the board a list of those
13 probationary and continuing contract teachers to be con-
14 sidered for transfer and subsequent assignment for the
15 next ensuing school year.

16 Special meetings may be called by the president or any
17 three members, but no business shall be transacted other
18 than that designated in the call.

19 A majority of the members shall constitute the quorum
20 necessary for the transaction of official business.

21 Board members shall receive compensation at the rate
22 of twenty dollars per meeting attended. But they shall not
23 receive pay for more than eighteen meetings in any one
24 year.

25 Members shall also be paid, upon the presentation of
26 an itemized sworn statement, for all necessary traveling
27 expenses incurred on official business, at the order of the
28 board.

29 When, by a majority vote of its members, a county
30 board of education deems it a matter of public interest,
31 such board may join the West Virginia school board assoc-
32 iation and the national school board association, and may
33 pay such dues as may be prescribed by said associations
34 and approved by action of the respective county boards.
35 Membership dues and actual traveling expense of board
36 members for attending meetings of the West Virginia
37 school board association may be paid by their respective
38 county boards of education out of funds available to meet
39 actual expenses of the members, but no allowance shall
40 be made except upon sworn itemized statements.

CHAPTER 66

(Senate Bill No. 213—By Mr. Bean, Mr. President, and Mr. Carrigan)

Sec. 37
AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, to be designated section thirty-seven, relating to the authority of county boards of education to impose a personal school tax for the support of public schools and to the collection thereof.

[Passed March 8, 1957; in effect from passage. Approved by the Governor.]

Article 5. District Board of Education.

Section

37. Authority to impose personal school tax for the support of public schools; collection of tax; procedure for enactment of ordinance.

Be it enacted by the Legislature of West Virginia:

+ Amend
That article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, to be designated section thirty-seven, to read as follows:

Section 37. *Authority to Impose Personal School Tax for the Support of Public Schools; Collection of Tax; Procedure for Enactment of Ordinance.*—For the support of public schools in the county, each county board of education shall have the authority to impose by ordinance a personal school tax of not more than ten dollars on each resident of the county twenty-one years of age or older: *Provided*, That any ordinance enacted under the provisions of this section shall be published at least once a week for two successive weeks in two newspapers published in such county; or if there be only one newspaper published therein, then in that newspaper; or if there be no newspaper published therein, then by posting copies of such ordinance for a like period in at least ten conspicuous places in such county, and in the event ten per cent of the

16 registered voters of said county by written petition duly
17 signed by them and filed with the board of education
18 within fifteen days after the expiration of such publish-
19 ing or posting, protest against said ordinance, the ordi-
20 nance shall not become effective until it shall be ratified by
21 a majority of the votes cast by the duly qualified voters of
22 such county at an election duly and regularly held as pro-
23 vided by the laws of the state of West Virginia, and the
24 result of said election ascertained and declared. Such
25 election shall be held after notice of such submission shall
26 be given by publication or posting of the same for two
27 successive weeks next prior to the date of such election as
28 above provided for the publication of the ordinance when
29 adopted. Said tax shall not be imposed upon or collected
30 from persons on the department of public assistance rolls
31 as of January first of any year. With respect to the col-
32 lection of any tax so imposed, the assessor and the sheriff
33 shall have the same powers and responsibilities as in the
34 case of the collection of capitation taxes. Every person
35 upon whom such tax is imposed shall be personally liable
36 therefor, and unless the tax is paid when due, it may be
37 collected from the delinquent taxpayer in a civil action in-
38 stituted by the county board in any court of competent
39 jurisdiction. All proceeds of the tax shall be deposited in
40 and credited to the general current expense fund of the
41 county board, except that the assessor or the sheriff, as
42 the case may be, may retain a commission of one per cent
43 on all such taxes collected by him: *Provided*, That limita-
44 tions as contained in chapter eleven-a, article one, section
45 seventeen of the code of West Virginia, one thousand nine
46 hundred thirty-one, as amended, shall not apply to the
47 commission retained hereunder.

48 Before enacting such ordinance the county board of
49 education shall publish a copy of the same once in two
50 newspapers of opposite politics published in the county, if
51 such there be, and otherwise in one newspaper so publish-
52 ed. If no newspaper is published in the county, publication
53 shall be in a newspaper of general circulation in the
54 county. An ordinance shall not be finally passed until
55 one week has elapsed after the last date of publication

56 and persons interested have been given an opportunity to
57 attend a meeting of the board and be heard with respect
58 to the ordinance. After passage of the ordinance, a certi-
59 fied copy thereof shall be filed in the office of the clerk
60 of the county court as a public record.

61 Before collecting the taxes imposed by this section the
62 assessor shall give bond in a penalty to be fixed by the
63 county board of education of not less than ten thousand
64 dollars nor more than one hundred thousand dollars, con-
65 ditioned for the faithful performance of his duties under
66 this section; the premium on such bond shall be paid by
67 the county board of education.

68 The authority to levy the school tax provided in this
69 article shall terminate five years after the effective date
70 of this act.

CHAPTER 67

(Senate Bill No. 214—By Mr. Bean, Mr. President, and Mr. Carrigan)

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto four new sections designated sections thirty-eight, thirty-nine, forty and forty-one, authorizing county boards of education to impose a tax upon certain instruments transferring title to real and personal property which are recorded, providing for the imposition and collection of such tax, disposition of the proceeds thereof, and penalties for violation.

[Passed March 8, 1957; in effect from passage. Approved by the Governor.]

Article 5. District Board of Education.

Section

38. Tax on instruments transferring title to real and personal property authorized; transfer not affected.
39. Procedure for imposing tax; filing for record.
40. Duties of the clerk of the county court; clerk and surety liable; disposition of proceeds.
41. Offenses; penalties; validity of instruments.

Be it enacted by the Legislature of West Virginia:

That article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto four new sections designated sections thirty-eight, thirty-nine, forty and forty-one, to read as follows:

Section 38. *Tax on Instruments Transferring Title to Real and Personal Property Authorized; Transfers Not Affected.*—Except as hereinafter provided, the board of education of any county school district shall have the authority to impose by ordinance a tax upon all instruments in the form of deeds, trust deeds and mortgages transferring title to real and personal property, or interests therein, offered for recordation or filing and recorded or filed in the office of the clerk of the county court of the county in which the school district is located. The tax shall not exceed the rate of two dollars and twenty cents for each five hundred dollars, or fractional part thereof, of the actual consideration paid or to be paid for, or of the principal amount of the debt secured by, the transfer, except that no more than five thousand dollars tax shall be due on any one transfer.

In the case of transfers of real property lying partly within and partly without the county in which the tax is imposed, the tax shall apply only to such proportion of the consideration, or to such proportion of the debt secured, as the value of the property within the county bears to the value of the whole property transferred.

In the case of a trust deed or mortgage which secures a debt already secured by a duly recorded trust deed or mortgage, the tax shall not apply to the amount owed on the debt secured by the previously recorded instrument, but only to any additional debt secured by the instrument offered for recordation.

In the case of a transfer of property where there is owing on the property transferred a sum of money secured by a duly recorded trust deed or mortgage, the obligation of which is transferred to and assumed by the transferee under the instrument offered for recordation,

34 the tax shall not apply to the amount of the obligation as-
35 sumed by the transferee.

36 In the case of a trust deed or mortgage which transfers
37 the same property which is transferred by a deed offered
38 for recordation and recorded simultaneously with such
39 trust deed or mortgage, the tax shall not apply to any
40 property transferred by such trust deed or mortgage
41 which is also transferred by such simultaneously record-
42 ed deed.

43 The provisions of this section shall not apply to any in-
44 strument conveying or transferring property where the
45 consideration or the debt secured is two hundred dollars
46 or less; to any conveyance or transfer effected by will,
47 testamentary trust, intestacy, deed of partition, eminent
48 domain, lease, conditional sales contract, change of name
49 or merger of corporations or otherwise by operation of
50 law; to any instrument conveying or transferring prop-
51 erty to a religious, educational, or charitable organization
52 incorporated or unincorporated; to any instrument con-
53 veying property to the state or any political subdivision
54 thereof or to the United States or any office or agency
55 thereof; to any instrument the effect of which is to con-
56 vey or transfer the title to property from one spouse to
57 the other; or to any confirmation, curative deed, correc-
58 tive deed, or other like instrument, except to the extent
59 of property of additional value thereby conveyed or
60 transferred or of any additional consideration paid there-
61 for, whichever is the greater.

Sec. 39. *Procedure for Imposing Tax; Filing for Rec-*
2 *ord.*—Before enacting such ordinance, the county board of
3 education shall publish one time a copy of the same in two
4 newspapers of opposite politics published in the county,
5 if such there be, and otherwise in one newspaper so pub-
6 lished. If no newspaper is published in that county, pub-
7 lication shall be in a newspaper of general circulation in
8 the county. An ordinance shall not be finally passed un-
9 til one week has elapsed after the last date of publication
10 and persons interested have been given an opportunity to
11 attend a meeting of the board and be heard with respect
12 to the ordinance.

13 After passage of such ordinance, a certified copy there-
14 of shall be filed in the office of the clerk of the county
15 court as a public record.

Sec. 40. *Duties of the Clerk of the County Court; Clerk
2 and Surety Liable; Disposition of Proceeds.*—When any
3 instrument upon which the tax authorized in section
4 thirty-eight of this article is legally applicable is offered
5 for recordation in the office of the clerk of the county
6 court, it shall be the duty of the clerk to ascertain and
7 compute the tax due thereon and collect such tax as a
8 prerequisite to the acceptance of the instrument for rec-
9 ordation.

10 The clerk shall append or show by stamp or otherwise
11 on the face or at the end of an instrument upon which he
12 has collected such tax a statement that he has collected
13 the tax and stating the amount of the tax collected. The
14 clerk shall keep a separate record of all such taxes col-
15 lected, and the clerk and the surety on his bond shall be
16 liable for the proceeds of such tax. The clerk shall at the
17 end of each month pay all proceeds of the tax to the sher-
18 iff and they shall be credited to the general current ex-
19 pense fund of the board of education, except a commission
20 of one per cent of such proceeds which shall be retained
21 for collecting such tax and credited to the general county
22 fund.

Sec. 41. *Offenses; Penalties; Validity of Instruments.*—
2 It shall be unlawful for any person to cause to be record-
3 ed any instrument upon which the tax authorized by sec-
4 tion thirty-eight of this article is legally applicable with-
5 out paying such tax. It shall also be unlawful for any
6 person to misrepresent the amount of the actual consid-
7 eration paid or to be paid, the principal amount of the
8 debt secured or any other pertinent fact when offering an
9 instrument for recordation upon which such tax is legally
10 applicable.

11 Failure to collect or pay such tax shall not affect the
12 validity of any instrument for any purpose, and shall not
13 constitute a lien upon the property transferred.

14 Any person who shall knowingly and intentionally vio-
15 late any of the provisions of this section or of the three

16 preceding sections shall be guilty of a misdemeanor and,
17 upon conviction thereof, shall be punished by a fine of not
18 less than twenty-five nor more than one hundred dollars.

19 The authority to levy the school tax authorized by this
20 act shall terminate five years after the effective date
21 thereof.

CHAPTER 68

(House Bill No. 312—By Mr. Vennari and Mr. King)

AN ACT to amend and reenact section two-a, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sick leave compensation.

[Passed March 9, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 7. Teachers.

Section

2-a. Sick leave compensation.

Be it enacted by the Legislature of West Virginia:

That section two-a, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2-a. *Sick Leave Compensation.*—Any county
2 board of education may establish and maintain in its
3 annual budget a separate fund to be known as the “teach-
4 ers’ sick leave fund”.

5 Any full-time teacher employed by a county board of
6 education that establishes such fund shall be entitled to
7 at least five days’ sick leave per year, cumulative to a total
8 of twenty days. Money allocated to the sick leave fund
9 shall be used to pay the salary of all full-time teachers
10 for time lost from assigned duties due to personal accident,
11 sickness, death in the immediate family, or any other

12 emergency cause that may be authorized or approved by
13 the board.

14 All sick leave benefits shall be paid at the end of each
15 school year. If funds budgeted for sick leave are insuffi-
16 cient to pay the amount due, the per diem salaries for
17 all teachers claiming sick leave benefits shall be reduced
18 proportionately. The board shall carry over from year to
19 year the accumulated balance in the sick leave fund. The
20 board is authorized to prescribe such other regulations
21 as it may deem necessary.

22 All moneys received by a county board of education
23 from any appropriation made by the Legislature for sick
24 leave benefits, if not used for the purposes of this section,
25 may be expended only to provide salary increases for
26 existing teachers, to pay the salaries of necessary addi-
27 tional teachers, or if so required to pay the legal minimum
28 salaries of existing teachers.

CHAPTER 69

(Senate Bill No. 70—By Mr. Traubert and Mr. Swearingen)

AN ACT to repeal sections twenty-five, twenty-six, twenty-seven and twenty-seven-a, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact sections fifteen, twenty-three, twenty-four, thirty and thirty-a of said article, and to amend said article by adding thereto a new section, designated section thirty-b, all relating to the licensing of teachers and school administrators.

[Passed February 13, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 7. Teachers.

Section

15. Teacher certification; general qualifications and requirements.
23. Authority of state superintendent of free schools to issue certificates; kinds of certificates.

- 24. Validity of first class certificates previously issued.
- 30. Certificate renewals and permanent certification.
- 30-a. Certification of teachers serving in the armed forces of the United States.
- 30-b. Validity of present certificates.

Be it enacted by the Legislature of West Virginia:

That sections twenty-five, twenty-six, twenty-seven and twenty-seven-a, article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that sections fifteen, twenty-three, twenty-four, thirty and thirty-a be amended and reenacted, and that a new section, designated section thirty-b, be added to said article, to read as follows:

Section 15. *Teacher Certification; General Qualifications and Requirements.*—No person employed as a teacher in the free schools of this state shall receive for such services any part of any free school funds who does not hold a valid teaching certificate licensing him to teach in the public schools for the period of his employment and showing the grade levels and subject areas in which he is qualified to teach: *Provided*, That if a teacher is employed in good faith on the anticipation that he is eligible for a certificate and it is later determined that he was not eligible, the state superintendent of schools may authorize payment by the county board of education to the teacher for a time not exceeding one school month. All certificates shall expire on June thirtieth of the last year of their validity irrespective of the date of issuance. Under no circumstances shall a certificate to teach be granted to any person who is not a citizen of the United States, is not of good moral character and physically, mentally and emotionally qualified to perform the duties of a teacher and who has not attained the age of eighteen years on or before the first day of October of the year in which his certificate is issued; except that an exchange teacher from a foreign country shall not be required to be a citizen of the United States. The term "teacher" as used in this section is intended to include the classroom teacher, school librarian, school principal, school superintendent, assistant superintend-

28 ent, supervisor of instruction and other persons em-
29 ployed in similar positions.

Sec. 23. *Authority of State Superintendent of Free
2 Schools to Issue Certificates; Kinds of Certificates.*—The
3 state superintendent of free schools shall have authority
4 to issue certificates valid in the public schools of the
5 state in accordance with standards and requirements
6 approved by the state board of education. Certificates
7 authorized to be issued include:

8 A professional certificate for teaching in the public
9 schools may be issued for a five-year period to the holder
10 of a bachelor's degree from an approved institution of
11 higher education, in which case, the certificate shall be
12 endorsed for teaching in the elementary or secondary
13 schools or both in accordance with an approved program
14 completed by the applicant. A professional certificate for
15 teaching in the public schools may be issued provision-
16 ally, in which case, it shall be valid for a three-year
17 period.

18 Professional certificates, as provided by this section, shall
19 be valid for teaching in grades one through nine, or seven
20 through twelve, or one through twelve, or in any other
21 combination of grades approved by the state board of
22 education, in accordance with the program of collegiate
23 training completed.

24 A professional administrative certificate may be issued
25 for a five-year period to an applicant who has completed
26 the requirements for a master's degree in an institution
27 of higher education approved to give graduate training,
28 in which case, the certificate shall be endorsed in ac-
29 cordance with an approved program completed by the
30 applicant.

31 Other certificates or teaching permits valid in the pub-
32 lic schools are authorized to be issued by the state super-
33 intendent of free schools, with the approval of the state
34 board of education, as warranted by conditions and the
35 changing needs of education.

Sec. 24. *Validity of First Class Certificates Previously
2 Issued.*—First class high school certificates, issued prior

3 to the effective date of this act, shall be valid in grades
4 seven through twelve. First class elementary certificates,
5 issued prior to the effective date of this act, shall be valid
6 in grades one through nine. Public school certificates
7 issued prior to the effective date of this act shall be valid
8 in grades one through twelve.

9 First class high school certificates, issued prior to the
10 effective date of this act, shall be valid in the elementary
11 schools provided the holder has had one full year or
12 more of teaching or principalship experience in the ele-
13 mentary grades prior to July one, one thousand nine
14 hundred thirty-four. In all such cases, the teacher or
15 principal shall file with his certificate in the office of the
16 county superintendent of schools a certified statement
17 of elementary experience to meet the above require-
18 ment.

Sec. 30. *Certificate Renewals and Permanent Certifica-*
2 *tion.*—Any certificate based on a bachelor's degree and val-
3 id for a five-year period which was originally issued in the
4 school year of one thousand nine hundred thirty-three
5 and one thousand nine hundred thirty-four, or any such
6 certificate issued thereafter, shall be renewable for the
7 period designated on the original certificate, provided
8 the holder: (1) Files application on a prescribed form
9 with the state department of education; (2) presents an
10 official transcript of six semester hours of approved credit,
11 as may be prescribed by the state board of education,
12 completed after the beginning of the period of validity
13 of the certificate to be renewed and within the five-year
14 period immediately preceding the date of application for
15 renewal; and (3) submits the recommendation of the
16 county superintendent of schools of the county in which
17 he last taught or resides. The third renewal becomes a
18 permanent certificate.

19 Any certificate based on a bachelor's degree which is
20 issued for a five-year period and valid or renewable in
21 the school year one thousand nine hundred fifty-six and
22 one thousand nine hundred fifty-seven, or any such cer-
23 tificate issued thereafter, shall be made permanent pro-
24 vided the holder: (1) Files application on a prescribed

25 form with the state department of education; (2) presents
26 an official transcript showing the completion of the re-
27 quirements for a master's degree at an institution of
28 higher education approved to give graduate training per-
29 tinent to the improvement of public school teachers, or
30 completes the fifth year of training leading to a bachelor's
31 degree in library science from a school fully approved
32 by the American library association; (3) submits a recom-
33 mendation based on successful teaching experience from
34 the county superintendent of schools of the county in
35 which he last taught or resides; and (4) submits evidence
36 of five years' teaching experience.

37 Any certificate not requiring college graduation or any
38 certificate issued for less than a five-year period which is
39 valid or renewable in the school year one thousand nine
40 hundred fifty-six and one thousand nine hundred fifty-
41 seven, or any such certificate issued thereafter, shall be
42 renewed for the period designated on the original certifi-
43 cate provided the holder: (1) Files application on a
44 prescribed form with the state department of education
45 before September one of the third year following the
46 expiration of the certificate; (2) presents an official tran-
47 script of six semester hours of credit, as may be pre-
48 scribed by the state board of education and completed
49 after the beginning of the period of validity of the certi-
50 ficate to be renewed; and (3) submits the recommenda-
51 tion of the county superintendent of schools of the county
52 in which he last taught or resides. The normal certificate
53 based on two years of collegiate preparation which was
54 discontinued with the one thousand nine hundred forty-
55 two series is subject to all regulations contained in this
56 paragraph except that the third renewal becomes a
57 permanent certificate.

58 A person who has reached the age of sixty and holds a
59 renewable certificate, as provided in this section, need
60 not present renewal credit but shall meet all other re-
61 newal requirements.

62 A person holding a permanent certificate of any type
63 who meets the requirements for a professional certificate
64 and completes eighteen semester hours of approved gradu-

65 ate credit shall, upon application, be issued a permanent
66 professional certificate provided he is recommended by
67 the county superintendent of the county in which he
68 last taught or resides.

69 If the applicant seeking renewal has cause to believe
70 that his county superintendent refuses to give a recom-
71 mendation without just cause, he shall have the right, in
72 such case, to appeal to the state superintendent of schools
73 whose responsibility it shall be to investigate the matter
74 and issue a certificate if, in his opinion, the county super-
75 intendent's recommendation was withheld arbitrarily.

2 *Sec. 30-a. Certification of Teachers Serving in the Armed*
3 *Forces of the United States.*—A certificate held by a
4 member of the armed forces of the United States shall
5 not expire prior to June thirtieth of the year following
6 his or her honorable discharge provided the certificate
7 was valid at the time of entry into the armed forces.

2 *Sec. 30-b. Validity of Present Certificates.*—Nothing in
3 this act shall be construed or interpreted in such way as
4 to invalidate or in any manner change or shorten the
5 validity period of certificates in force on the effective
6 date of this act.

CHAPTER 70

(Senate Bill No. 298—By Mr. Traubert)

AN ACT to amend article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-three, providing for a file of names of qualified teachers to be kept by the state superintendent of schools.

[Passed March 8, 1957; in effect from passage. Approved by the Governor.]

Article 7. Teachers.

Section

33. State superintendent to keep master file of qualified teachers for use by school officials.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-three, to read as follows:

Section 33. *State Superintendent to Keep Master File of Qualified Teachers for Use by School Officials.*—The state superintendent of free schools shall prepare and keep a master file of names of persons who meet the regular qualifications to teach in the public schools of West Virginia. Each person shall be listed alphabetically, and, insofar as possible, by his major and minor teaching fields. The following data shall also be included: Last known home address, unmarried and married name, date of birth, sex, names of colleges and universities attended, years of such attendance and degrees awarded, and kinds of teaching certificates held.

The proper officers of West Virginia university and of the colleges supported by the state shall, within ninety days after the effective date of this section, transmit to the state superintendent of free schools a list of persons suitable for inclusion in said master file. Such list shall be as complete as practicable but shall include only students who have attended the school during the period from July first, one thousand nine hundred thirty-seven, to March fifteenth, one thousand nine hundred fifty-seven. Thereafter, the proper officers of such schools shall, on or before March first and July first of each year, submit a similar list of persons who qualify for inclusion in the master file. The state superintendent may request similar information from colleges and universities which are not supported by the state.

The master file shall be available for the use of proper county school officials. The state superintendent shall, through the use of the file, assist the county officials in finding qualified persons to fill teaching positions.

The state superintendent may make appropriate rules and regulations to carry out the provisions of this section.

CHAPTER 71

(House Bill No. 242—By Mr. Kessel and Mr. Vennari)

AN ACT to amend and reenact section twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowance upon retirement under the state teachers' retirement system.

[Passed March 9, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 7-a. State Teachers' Retirement System.

Section

26. Allowance upon retirement.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 26. *Allowance upon Retirement.*—Upon establishment of eligibility for a retirement allowance, a member shall be granted an annuity which shall be the sum of the following:

(a) The actuarial equivalent of the contributions and deposits of the member in his individual account up to the time of his retirement, with regular interest.

(b) The actuarial equivalent of the contributions of the employer up to the time of the member's retirement, which shall equal the sum in subsection (a) of this section minus deposits with regular interest on such deposits.

(c) Where prior service credit has been granted, an allowance of one and one-half per cent of the member's average final salary multiplied by the number of years of prior service credited to him.

(d) The actuarial equivalent of the amounts that would have accumulated under subsections (a) and (b) of this

18 section, if the member had contributed to his individual
19 account until he was fifty years old, at the annual rate of
20 his past actual contributions, but this subsection shall
21 apply only as additional income to members who qualify
22 for disability retirement before they are fifty years old.

23 (e) Twelve dollars multiplied by his total service as
24 a teacher.

25 (f) The member shall receive in addition to the allow-
26 ances under subsections (c) and (d) an amount equal
27 to six dollars multiplied by his total service credit: *Pro-*
28 *vided, however,* The maximum allowance under this sub-
29 section shall be one hundred and ninety-two dollars: *And*
30 *provided further,* That this subsection shall be effective
31 on and after July the first, one thousand nine hundred
32 fifty-seven.

33 The disability annuities of all teachers retired for dis-
34 ability shall be based upon a disability table prepared
35 by a competent actuary, approved by the retirement
36 board.

37 For the purposes of subsection (c):

38 (1) An allowance for prior service shall in no case
39 exceed three-fifths of the member's average final salary.

40 (2) Average final salary for this purpose shall in no
41 case exceed two thousand five hundred dollars, nor shall
42 it be less than twelve hundred dollars.

43 All annuities shall be paid in twelve monthly payments.
44 In computing such monthly payments, fractions of a cent
45 shall be deemed a cent. Such monthly payments shall cease
46 with the payment for the month within which the bene-
47 ficiary dies, and shall begin with the payment for the
48 month succeeding the month within which the annuitant
49 became eligible under this article for the annuity granted;
50 in no case, however, shall annuitant qualifying for an
51 annuity because of age or service, receive more than four
52 monthly payments which are retroactive after the board
53 receives his application for annuity.

54 In case the retirement board receives data affecting the
55 approved annuity of a retired teacher, the annuity shall
56 be changed in accordance with such data, the change

57 being effective with the payment for the month within
58 which the board received the new data.

59 An annuity application shall be cancelled immediately
60 if the applicant dies before the retirement board approved
61 such application.

62 The provisions of this section shall apply to the compu-
63 tation of all monthly allowances paid to beneficiaries
64 after the effective date hereof.

65 Any person who has attained the age of sixty-five and
66 who has served at least twenty-five years as a teacher
67 prior to July one, one thousand nine hundred forty-one,
68 shall be eligible for prior service credit and for prior
69 service pensions as prescribed in this section.

CHAPTER 72

(Senate Bill No. 93—By Mr. Martin)

AN ACT to amend and reenact section three, article ten, chap-
ter eighteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the land
grant status of West Virginia colleges.

[Passed March 4, 1957; in effect ninety days from passage. Approved by the
Governor.]

Article 10. Federal Aid and Gifts for Educational Purposes.

Section

3. Federal aid for West Virginia university.

Be it enacted by the Legislature of West Virginia:

That section three, article ten, chapter eighteen of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:

Section 3. *Federal Aid for West Virginia University.*—

2 The state of West Virginia hereby renews its assent to the

3 provisions and purposes of the act of Congress of August
4 thirtieth, eighteen hundred and ninety, entitled "An act
5 to apply a portion of the proceeds of the public land to
6 the more complete endowment and support of the colleges
7 for the benefit of agriculture and the mechanic arts estab-
8 lished under the provisions of the act of Congress approv-
9 ed July second, eighteen hundred and sixty-two," and of
10 all subsequent acts of Congress amending or supplement-
11 ing said act, and accepts the appropriations of money
12 authorized thereby.

13 The state of West Virginia hereby designates West Vir-
14 ginia university as the beneficiary of such appropriations
15 for the instruction of students.

CHAPTER 73

(Senate Bill No. 293—By Mr. Martin)

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-b, relating to payroll deductions for contributions by employees of the board of governors of West Virginia university for participation in group insurance plans.

[Passed March 2, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 11. West Virginia University.

Section

5-b. Payroll deductions for employee participation in group insurance plans.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-b, to read as follows:

Section 5-b. *Payroll Deductions for Employee Participation in Group Insurance Plans.*—Whenever any employees of the board of governors of West Virginia university shall be eligible to participate in any group insurance plan, the board shall have the authority to authorize such participation, and, upon the written request of any participating employee, may make periodic deductions from salary payments due such employee of the amount of the contribution he is required to make for such participation. Upon proper requisition of the board, the auditor shall periodically issue a warrant, payable as specified in the requisition, for the total contributions so withheld from the salaries of all participating employees.

CHAPTER 74

(Senate Bill No. 219—By Mr. Martin)

AN ACT to repeal section two, article thirteen, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact section one of said article thirteen, all relating to West Virginia state college.

[Passed March 5, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 13. West Virginia State College.

Section

1. Continuation and management; Washington Carver camp.

Be it enacted by the Legislature of West Virginia:

That section two, article thirteen, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that section one of said article thirteen be amended and reenacted to read as follows:

- Section 1. *Continuation and Management; Washington Carver Camp.*—The institution for the instruction of students heretofore established and located at Institute, in

4 Kanawha county, shall be continued and shall be known
5 as the "West Virginia State College." The business and
6 educational affairs of said college shall be under the con-
7 trol, supervision and management of the state board of
8 education, as provided in section thirteen, article two of
9 this chapter.

10 The state board of education shall establish and main-
11 tain in the West Virginia state college, in addition to the
12 courses of study leading to a bachelor of science or bache-
13 lor of arts degree, such professional and pre-professional
14 courses of study as may be expedient and practicable,
15 and shall prescribe the conditions for graduation there-
16 from and make rules for the conferring of degrees and
17 for issuing the proper diplomas to those who successfully
18 complete such courses.

19 The rules and regulations made by the president and
20 faculty of said college for its general government, for
21 the admission of students thereto, the standards of
22 scholarship to be maintained therein and the graduation
23 of students therefrom, shall be submitted to the state
24 board of education for its approval.

25 The Washington Carver camp, heretofore established
26 as an adjunct of the West Virginia state college, is hereby
27 continued for the purposes and function to be determined
28 by the state board of education. The state board of edu-
29 cation is hereby authorized to provide necessary and suit-
30 able equipment for carrying out the purposes of said
31 camp. The title to the property upon which such camp site
32 is located shall be and remain in the state board of educa-
33 tion. Any appropriations hereafter made to carry out the
34 provisions and purposes of this section shall be expended
35 through the state board of education.



CHAPTER 75

(House Bill No. 339—By Miss Hallanan and Mr. Blue)

AN ACT to amend and reenact sections one, two, three, four,
five and six, article seventeen, chapter eighteen of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia schools for the deaf and the blind.

[Passed March 4, 1937; in effect ninety days from passage. Approved by the Governor.]

Article 17. West Virginia Schools for the Deaf and the Blind.

Section

1. Continuation; management.
2. Admission and record of pupils.
3. Tuition, board and clothing of pupils.
4. Period of attendance; special admission.
5. Course of instruction.
6. Registration of deaf and blind by assessors.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five and six, article seventeen, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *Continuation; Management.*—The West Virginia schools for deaf pupils and blind pupils heretofore established and located at Romney, in Hampshire county, shall be continued and shall be known as the “West Virginia Schools for the Deaf and the Blind.” The schools shall be maintained for the care and education of the deaf youth and blind youth of the state. The educational or business affairs of the schools shall be under the control, supervision and management of the state board of education, as provided in section thirteen, article two of this chapter.

Sec. 2. *Admission and Record of Pupils.*—All deaf youth and blind youth resident in the state, between the ages of six and twenty, inclusive, providing they are educable, physically capable and free from contagious disease, shall be enrolled in the school on application to the superintendent, until the school is filled. Applicants shall be admitted in the order of their application. It shall be the duty of the superintendent to keep a careful record of the names of

9 all applicants, with the dates of their admission and dis-
10 charge, their ages, post-office addresses, the names of their
11 parents or guardians, and the degree, cause and circum-
12 stances of their deafness or blindness.

Sec. 3. *Tuition, Board and Clothing of Pupils.*—All such
2 deaf pupils and blind pupils shall be admitted to the
3 schools without charge for board and tuition. When not
4 otherwise provided with clothing they shall be furnished
5 therewith by the institution while they are pupils therein,
6 and the superintendent shall make out an account therefor
7 in each case against the county where the pupil receiving
8 the clothing resided at the time the clothing was furnished,
9 in an amount not exceeding seventy-five dollars per
10 annum for any one pupil, which account shall be sworn
11 to by the superintendent and countersigned by the busi-
12 ness manager and shall be transmitted by the superinten-
13 dent to the auditor of the state, who shall forward a copy
14 thereof to the clerk of the county court of such county.
15 The county court shall, at its next levy term, provide for
16 the payment of the same and cause the amount to be paid
17 directly to the West Virginia schools for the deaf and the
18 blind to be deposited into the indigent clothing fund.
19 All money so received shall be disbursed upon requisitions
20 for the payment of accounts incurred thereunder. If any
21 such accounts are not paid within a reasonable time after
22 such levy term, it shall be the duty of the auditor to collect
23 the same.

Sec. 4. *Period of Attendance; Special Admissions.*—The
2 pupils of said schools may continue therein until comple-
3 tion of the prescribed course of study, or a lesser period
4 of time which the condition and progress of the pupil
5 may justify, as determined by the state board of education
6 and the superintendent. After all applicants between the
7 prescribed ages of six and twenty years, inclusive, have
8 been enrolled, if there are additional accommodations,
9 the superintendent may enroll other deaf pupils and blind
10 pupils who may be of suitable age to receive any advan-
11 tage from the institution, and upon such terms as the
12 state board of education may prescribe; but it shall be
13 distinctly understood that such persons shall withdraw

14 from the institution in the order of their admission to
15 make room for new applicants between the ages pre-
16 scribed.

Sec. 5. *Course of Instruction.*—The course of instruction
2 in the institution shall be prescribed by the state board of
3 education with the advice of the superintendent, and shall
4 be as extensive in the intellectual, musical, vocational, and
5 prevocational departments as the capacities and interests
6 of the pupils may require.

Sec. 6. *Registration of Deaf and Blind by Assessors.*—
2 In addition to their other duties the county assessors of the
3 state are hereby required to register, in a book to be
4 furnished them by the state auditor for the purpose, the
5 names of all deaf persons and blind persons under twenty-
6 one years of age in their respective counties, with the
7 degree and cause of deafness and blindness in each case,
8 as far as can be ascertained from the heads of the families
9 or from other persons whom the county assessors may
10 conveniently consult, their ages, the names of their parents
11 or guardians, their post-office addresses, and such other
12 facts as may be useful in making the institution efficient
13 in the education of the deaf and of the blind. They shall
14 complete the registration on or before June one of each
15 year and forward their report to the auditor, a copy to the
16 state superintendent of schools and to the superintendent
17 of the West Virginia schools for the deaf and the blind on
18 or before July one of each year. The superintendent shall
19 immediately communicate with the parents or guardians
20 of all the deaf persons and the blind persons mentioned
21 in the assessor's report, with a view of their admission as
22 pupils into said schools.

CHAPTER 76

(Com. Sub. for Senate Bill No. 171—Originating in the
Senate Committee on Education)

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

by adding thereto a new article, designated article twenty-one, relating to the creation of a state scholarship fund to provide scholarships for the training of persons for teaching in the public schools of West Virginia, establishing the conditions and provisions for such scholarships in education, and providing for the administration of the program by the state superintendent of free schools.

[Passed March 8, 1957; in effect from passage. Approved by the Governor.]

Article 21. Scholarships for Teacher Training.

Section

1. Need for scholarships.
2. Creation of West Virginia scholarship fund.
3. Number of scholarships.
4. County scholarship committees; selection of scholarship holders.
5. Value of scholarships; disbursement of funds.
6. Giving of notes.
7. Repayment or cancellation of notes.
8. State superintendent of free schools to make necessary rules and regulations.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-one, to read as follows:

Section 1. *Need for Scholarships.*—The state Legislature hereby declares that there is a wide and continuing need for new and additional teachers in the public school system of the state, and that the scholarships herein provided will attract additional young people to the teaching profession and thus aid in the solution of a pressing and serious problem facing the people of this state.

Sec. 2. *Creation of West Virginia Scholarship Fund.*—There is hereby created the West Virginia scholarship fund for teacher trainees for the public purpose of relieving the existing teacher shortage in the schools, to be administered by the state superintendent of free schools.

2 Sec. 3. *Number of Scholarships.*—There are hereby
3 created one hundred scholarships as follows: In each
4 county there shall be a number of scholarships equal to
5 the number of delegates from that county in the House
6 of Delegates of the state Legislature.

2 Sec. 4. *County Scholarship Committees; Selection of*
3 *Scholarship Holders.*—In each county there shall be cre-
4 ated a selection committee comprised of the county su-
5 perintendent of schools and the board of education, with
6 the superintendent to serve as chairman of the commit-
7 tee. Each county scholarship committee, by May one of
8 each year, shall select and recommend to the state su-
9 perintendent of free schools for appointment from that
10 county, on the basis of merit and need as hereinafter set
11 forth, the number of high school graduates, or prospective
12 graduates, not to exceed the number as determined in
13 section three hereof, plus an equal number of alternates,
14 who are interested in teaching and whose work and qual-
15 ifications are such as to indicate that they possess the
16 qualifications to make them successful teachers. Each
17 person selected shall rank among the upper third of the
18 members of the graduating class of which he is a member,
19 and be a bona fide resident of the county from which he
20 is selected. The selection by the county scholarship com-
21 mittee shall also be partially based on the financial needs
22 of the students selected in order to promote the purposes
23 of this article of encouraging additional students to enter
24 the teaching profession who might otherwise be unable to
25 do so. Scholarships shall not be awarded to any individual
26 who has been issued any type of teaching certificate by
27 the state board of education or the state department of
28 education.

29 In the event of a rejection of a scholarship or a vacancy
30 in a scholarship during the school year, the state super-
31 intendent of free schools shall fill the vacancy upon the
32 recommendation of the appropriate county scholarship
33 committee where the rejection or vacancy has occurred,
34 from the list of alternates in that county.

 Sec. 5. *Value of Scholarships; Disbursement of Funds.*—

2 Each scholarship shall carry a stipend of five hundred
3 dollars for a school year of nine months, which shall be
4 disbursed to scholarship holders upon their application
5 as approved by the state superintendent of free schools
6 upon vouchers for that purpose. Such scholarships shall
7 be paid in equal installments at the beginning of each
8 quarter or semester while college is in session to each
9 person who has been awarded such a scholarship when
10 the following requirement is met:

11 Such person shall be a bona fide full-time student in the
12 college or department of education in a West Virginia in-
13 stitution of higher education or in the pre-education pro-
14 gram of such institution where the college of education is
15 a senior college within the institution, provided that the
16 program in education is approved by the state board of
17 education.

18 Each person awarded a scholarship under the terms of
19 this article shall be eligible upon the completion of satis-
20 factory work during the first year to have the scholarship
21 renewed at the discretion of the state superintendent of
22 free schools for a period of one additional year of full-
23 time study in a program of education or pre-education as
24 stipulated in the preceding paragraph. Two further re-
25 newals of one year each may be made under the same
26 conditions with no person holding a scholarship longer
27 than is necessary to complete all of the requirements for
28 graduation from the undergraduate course in teacher
29 training he is pursuing.

Sec. 6. *Giving of Notes.*—Each person who receives a
2 scholarship shall execute notes and shall deliver said
3 notes to the state superintendent of free schools or to his
4 representative. Each such note shall be payable on de-
5 mand to the state treasurer for the amount of the quar-
6 terly or semi-annual payment. The superintendent shall
7 hold said notes until they have been paid or cancelled as
8 prescribed in section seven of this article.

Sec. 7. *Repayment or Cancellation of Notes.*—At the
2 expiration of each school year of service as a teacher in
3 the public schools of West Virginia by a person who has

4 held a scholarship granted under this article, such person
5 shall submit to the state superintendent of free schools a
6 statement of service on a form provided for that purpose
7 and certified by the county superintendent in the county
8 in which he has taught. Upon receipt of such statement in
9 proper form, the state superintendent shall cancel the
10 oldest outstanding notes given by such person covering
11 the scholarship for one year. If for any reason, except
12 for death or physical or mental disability, or being draft-
13 ed into the armed services, a recipient of a scholarship
14 fails successfully to complete his education course and to
15 be certified to teach in the public schools of West Vir-
16 ginia, or if upon completion of such course and certifica-
17 tion as a teacher he fails to file with the state superintend-
18 ent of free schools by July first of each year a statement
19 concerning his previous year's employment and his ad-
20 dress for the ensuing year, the state superintendent of
21 free schools shall make demand for payment of all of said
22 unpaid and uncanceled notes and shall transmit all such
23 notes promptly to the state treasurer who shall enforce
24 collection thereon and shall deposit such sums so collect-
25 ed in the general revenue fund.

Sec. 8. *State Superintendent of Free Schools to Make
2 Necessary Rules and Regulations.*—The state superin-
3 tendent of free schools shall have the power to make all
4 necessary rules and regulations to carry this article into
5 effect.

CHAPTER 77

(Senate Bill No. 294—By Mr. Martin)

AN ACT to amend and reenact section one, article one-a, chap-
ter twenty-five of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the im-
position and collection of enrollment and other fees at
state educational institutions.

[Passed March 8, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 1-a. Fees and Other Money Collected at State Institutions.

Section

1. Enrollment and other fees at educational institutions; refund of fees.

Be it enacted by the Legislature of West Virginia:

That section one, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *Enrollment and Other Fees at Educational Institutions; Refund of Fees.*—The governing boards of state educational institutions shall fix enrollment, tuition, registration, and other fees for each semester or school term for the different classes or categories of students enrolling at the state educational institutions, and may include among such fees any one or more of the following: (1) Health service fees; (2) infirmary fees, and (3) student activities, recreational, athletic and extracurricular fees. All fees collected under (1), (2) and (3) shall be paid into special funds and shall be used only for the purposes for which the fees are collected: *Provided, however,* That the maximum fees to be collected under this section for resident students shall not exceed two hundred dollars per semester; and for nonresident students five hundred dollars per semester. The schedule of fees, and any changes therein, shall be entered in the minutes of the meetings of the governing board, and the governing board shall file with the state auditor and state budget director a certified copy of such schedule and changes.

In addition to the fees mentioned in the preceding paragraph, but subject to all requirements and within the limits fixed thereby, the governing board of any state educational institution may impose and collect a student union building fee. All such building fees collected at the institution shall be paid into a special fund and shall be used only for the eventual construction and operation of a student union building or for the renovation of an existing structure for use as a student union building. Until such time as the special fund, together with any other moneys

31 available for the purpose, may be large enough to defray
32 the cost of providing a student union building, all moneys
33 in the fund may be invested in any such bonds or other
34 securities as are now or may hereafter be authorized as
35 proper investments for state funds.

36 Refund, as an erroneous payment, may be made of any
37 such fees, upon the voluntary or involuntary withdrawal
38 from classes of any student, until eight weeks of the school
39 semester or term have expired, but no refund may be
40 made thereafter.

CHAPTER 78

(Senate Bill No. 323—Originating in the
Senate Committee on Finance)

AN ACT to amend and reenact section five, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the establishment, maintenance, and operation of book stores at state educational institutions and to the disposition of revenues derived therefrom.

[Passed March 5, 1957; in effect from passage. Approved by the Governor.]

Article 1-a. Fees and Other Money Collected at State Institutions.

Section

5. Establishment, maintenance, and operation of book stores at state educational institutions; disposition of revenues.

Be it enacted by the Legislature of West Virginia:

That section five, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 5. *Establishment, Maintenance, and Operation
2 of Book Stores at State Educational Institutions; Disposi-*

3 *tion of Revenues.*—The governing board of each state edu-
4 cational institution shall have the authority to establish
5 and operate a book store at the institution. The book store
6 shall be operated for the use of the institution itself, in-
7 cluding each of its schools and departments, in making
8 purchases of books, stationery and other school and office
9 supplies generally carried in college stores, and for the
10 benefit of students and faculty members in purchasing
11 such products for their own use, but no sales shall be made
12 to the general public. The prices to be charged the institu-
13 tion, the students and the faculty for such products shall
14 be fixed by the governing board, shall not be less than the
15 prices fixed by any fair trade agreements, and shall in
16 all cases include in addition to the purchase price paid by
17 the book store a sufficient handling charge to cover all
18 expenses incurred for personal and other services, supplies
19 and equipment, storage, and other operating expenses, to
20 the end that the prices charged shall be commensurate
21 with the total cost to the state of operating the book store.

22 All moneys derived from the operation of the store shall
23 be paid into a special revenue fund as provided in section
24 two, article two, chapter twelve of this code. The govern-
25 ing board shall, subject to the approval of the governor,
26 fix and from time to time change the amount of the re-
27 volving fund necessary for the proper and efficient opera-
28 tion of each book store. Whenever at the end of any fiscal
29 year the unencumbered balance in the book store special
30 revenue fund shall exceed the amount of the revolving
31 fund so established, the excess shall be transferred by the
32 state auditor to the general revenue fund and become a
33 part of the general revenue of the state.

34 Moneys derived from the operation of the book store
35 shall be used first to replenish the stock of goods and to
36 pay the costs of operating and maintaining the store. From
37 any balance in the university book store fund not needed
38 for these purposes, the board of governors of West Vir-
39 ginia university shall have authority to expend a sum not
40 to exceed two hundred eighty thousand dollars for the con-
41 struction of a building to house the university book store.
42 Until such building is constructed, the board of governors

43 and the governor shall take this authorization into account
44 in fixing the amount of the revolving fund for the univer-
45 sity book store.

CHAPTER 79

(Senate Bill No. 146—By Mr. Moats and Mr. Swearingen)

AN ACT to amend and reenact chapter ninety-two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-three, authorizing county boards of education to qualify during the next fiscal year for state aid for repair and construction of public schools.

[Passed February 11, 1957; in effect ninety days from passage. Approved by the Governor.]

Section

1. County boards of education authorized to qualify for school building funds during next fiscal year.

Be it enacted by the Legislature of West Virginia:

That chapter ninety-two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-three, be amended and reenacted to read as follows:

Section 1. *County Boards of Education Authorized to Qualify for School Building Funds During Next Fiscal Year.*—Any county board of education that failed to qualify for a full share of state aid for the repair and construction of public school buildings, allocated to it from the funds appropriated by item fifty-three, section five, title two of the one thousand nine hundred forty-nine budget act, may qualify at any time during the next fiscal year for all or any part of such allocation that may be reappropriated by the fifty-third Legislature. Eligibility therefor may be established by any of the methods prescribed in section two, article nine-c, chapter

13 eighteen of the code, or by proof that the total assessed
14 valuations in the county have been increased as much as
15 fifty per cent between the years one thousand nine hun-
16 dred forty and one thousand nine hundred fifty-eight.

CHAPTER 80

(House Bill No. 155—By Mr. Brotherton and Mr. Charnock)

AN ACT to amend and reenact section three, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to delegates to national convention; election.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 4. Nomination or Election of Candidates at Primaries.

Section

3. Delegates to national convention; election.

Be it enacted by the Legislature of West Virginia:

That section three, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. *Delegates to National Convention; Election.*—

2 At each May primary there shall be elected by the voters
3 of each political party of the state the number of persons
4 to which the party is entitled as delegates at large, and
5 by the voters of each political party in each congressional
6 district in the state the number of delegates to which the
7 district is entitled, in the national convention of the party
8 to be next held after the date of such primary. The per-
9 sons receiving the highest number of votes in the state as
10 delegates at large, to the number to which the state is
11 entitled, shall be elected delegates. The persons receiving
12 the highest number of votes as delegates in any congres-

13 sional district, to the number to which the district is en-
14 titled, shall be elected delegates. Each delegate so elected
15 shall then appoint an individual to serve as alternate
16 delegate, and shall by registered letter notify the secre-
17 tary of state of such appointment within forty days after
18 the May primary.

CHAPTER 81

(House Bill No. 40—By Mr. Mills)

AN ACT to amend and reenact section twenty-three, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to vacancies in nominations for elections and payment of filing fees by candidates.

[Passed February 21, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 4. Nomination or Election of Candidates at Primaries.

Section

23. Vacancies in nominations; filing fees.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 23. *Vacancies in Nominations; Filing Fees.*—If
2 any vacancy shall occur in the party nomination of can-
3 didates for office, caused by the death, withdrawal, failure
4 to make a nomination for the office at the primary elec-
5 tion, or otherwise, it may be filled and the name of the
6 candidate certified by the executive committee of the
7 political party for the political division in which the
8 vacancy occurs. If such vacancy be not filled by the execu-
9 tive committee more than forty-five days next preceding

10 the date of the election, it shall be lawful for the chairman
 11 of the political party executive committee for the political
 12 division to fill such vacancy and make a certificate thereof
 13 and file the same with the officer with whom the original
 14 certificate of nomination was, should, or might have been,
 15 regularly filed. And it shall be the duty of the officer to
 16 receive and proceed with the same in all respects as an
 17 original nomination: *Provided, however,* That in no in-
 18 stance shall a certificate be filed and received less than
 19 forty-two days preceding the date of election: *Provided*
 20 *further,* That where the vacancy exists because of a failure
 21 to make a nomination for the office at the primary elec-
 22 tion, no nomination under this section shall be deemed
 23 filed until a filing fee shall have been paid in an equal
 24 amount and to the same office that a candidate for the
 25 nomination to the position being filled under this section
 26 is required to pay under section six-a of this article.

CHAPTER 82

(Com. Sub. for Senate Bill No. 269—Originating in the
 Senate Committee on the Judiciary)

AN ACT to amend and reenact section two, article two, chap-
 ter fifty-four of the code of West Virginia, one thousand
 nine hundred thirty-one, as amended, relating to pleadings
 in proceedings in eminent domain.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the
 Governor.]

Article 2. Procedure.

Section

2. Pleadings; verification.

Be it enacted by the Legislature of West Virginia:

That section two, article two, chapter fifty-four of the code
 of West Virginia, one thousand nine hundred thirty-one, as
 amended, be amended and reenacted to read as follows:

Section 2. *Pleadings; Verification.*—The pleadings shall
2 be in writing and shall be verified. The petition shall de-
3 scribe with reasonable certainty the property proposed to
4 be taken, and may embrace one or more parcels of land
5 where the ownership is the same. If an estate less than a
6 fee is proposed to be taken, the petition shall describe
7 with reasonable certainty the particular estate less than
8 the fee which it is proposed to take, the name of the own-
9 er or owners thereof, the manner and extent of their re-
10 spective interests. If there are any liens upon or con-
11 flicting claims to such real estate, the petition shall state
12 the nature and amount of such liens and claims and the
13 names and places of residence of the persons who hold the
14 same, so far as known to the petitioner. Where there are
15 persons interested in the property proposed to be taken
16 whose names are unknown to the applicant, or it is not
17 known to the applicant whether there are any other per-
18 sons interested in the property proposed to be taken, or
19 there be any contingent or executory interest or estate in
20 such property which is liable to vest in or to open and let
21 in persons not in being, such fact shall be stated in the
22 petition and such persons, if any, shall be made parties
23 defendant to such petition by the general description of
24 parties unknown. The joinder of any person having only
25 a contingent or executory interest in the property pro-
26 posed to be taken shall not be necessary when the person
27 not joined is virtually represented by any other party or
28 parties defendant; and where such virtual representation
29 exists no order or decree made thereunder shall be
30 deemed erroneous or void because of such non-joinder.
31 The petition shall also state the use to which the estate
32 sought to be taken is intended to be appropriated.

CHAPTER 83

(Com. Sub. for Senate Bill No. 264—Originating in the
Senate Committee on the Judiciary)

AN ACT to amend and reenact section three, article two, chap-
ter fifty-four of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to notices to the owner or other interested party in eminent domain proceedings when the property proceeded against is subject to future interests.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 2. Procedure.

Section

3. Notice; riparian owner affected by taking water.

Be it enacted by the Legislature of West Virginia:

That section three, article two, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. *Notice; Riparian Owner Affected by Taking Water.*—Of such application ten days' notice shall be served on the owners, claimants and persons holding liens, whose interests the applicant seeks to condemn, and the notice may be given either before the petition is presented or afterwards. But where the owners of the real estate proposed to be taken or the persons holding such liens or conflicting claims, or any of them, are nonresidents of the state or their whereabouts is unknown, or they are unknown to the applicant, or there be any persons made parties defendant by the general description of parties unknown as provided in section two of this article, the notice as to them, instead of being thus served, may be given by advertisement containing (by reference to a plat filed for the purpose in the office of the clerk of the circuit court or otherwise) a specific description of the property in which they are interested that is proposed to be taken, and stating the purpose to which it is intended to be appropriated, and the time and place at which a hearing will be asked upon the application, which advertisement shall be published at least once a week for four successive weeks in some newspaper published in the county, or if none be published therein, then some newspaper of general circulation in the county.

25 Where water is to be taken as authorized in section ten,
26 article one of this chapter, notice to riparian owners hav-
27 ing lands below the point at which the water is proposed
28 to be taken, and likely to be affected thereby, shall be
29 given by publishing the same once each week for four
30 successive weeks in some newspaper of general circula-
31 tion published in the county. Any such riparian owner
32 may come into court, or before the judge of such court in
33 vacation, on the return day of the notice and publication,
34 make himself a party to the proceedings and have his
35 rights passed upon by the commissioner, and his damage,
36 if any, ascertained, allowed and paid as in this chapter
37 provided for the taking of lands.

CHAPTER 84

(Com. Sub. for Senate Bill No. 265—Originating in the
Senate Committee on the Judiciary)

AN ACT to amend and reenact section four, article two, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment of a guardian ad litem in eminent domain proceedings for owners or other interested parties under disability or who are unknown.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 2. Procedure.

Section

4. Persons under disability.

Be it enacted by the Legislature of West Virginia:

That section four, article two, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 4. *Persons Under Disability*.—If the owner, or
2 person holding any lien or claim, be under any disability

3 and there be a guardian or committee for him, such
 4 guardian or committee shall be notified; but if there be
 5 no guardian or committee or if any such owner or person
 6 be unknown or if there be any persons made parties by
 7 the general description of parties unknown, as provided
 8 in section two of this article, the court, or judge thereof
 9 in vacation, shall appoint a guardian ad litem to defend
 10 such interests and may direct the payment of such
 11 guardian ad litem, in an amount to be fixed by the court
 12 or judge, to be taxed as costs and paid by the applicant.

CHAPTER 85

(House Bill No. 184—By Mr. Richardson)

AN ACT to amend article one, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four, relating to the inapplicability of the rule against perpetuities to options in leases.

(Passed March 1, 1957; in effect ninety days from passage. Approved by the Governor.)

Article 1. Creation of Estates Generally.

Section

24. Options in leases; rule against perpetuities.

Be it enacted by the Legislature of West Virginia:

That article one, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, to be designated section twenty-four, to read as follows:

Section 24. *Options in Leases; Rule Against Perpetuities.*—An option contained in any lease to purchase the whole or any part of the leased premises, exercisable either during the term of the lease or immediately upon its termination, shall, if otherwise valid, be enforceable

6 in accordance with its terms, irrespective of the rule
7 against perpetuities. In any suit to enforce such option,
8 the lessor, or the successors in interest of the lessor, shall
9 not plead the rule against perpetuities as a defense, and
10 the same shall not constitute a defense either in law or
11 in equity: *Provided*, That this section shall not apply to
12 any lease heretofore executed.

—c—

CHAPTER 86

(Senate Bill No. 88—By Mr. Martin)

AN ACT to amend chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seven, relating to gifts of securities and money to minors.

[Passed February 14, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 7. Gifts to Minors Act.

Section

1. Definitions.
2. Manner of making gift.
3. Effect of gift.
4. Duties and powers of custodian.
5. Custodian's expenses, compensation, bond and liabilities.
6. Exemption of third persons from liability.
7. Resignation, death or removal of custodian; bond; appointment of successor custodian.
8. Accounting by custodian.
9. Construction.
10. Short title.
11. Severability.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article seven, to read as follows:

- Section 1. *Definitions*.—In this article, unless the con-
2 text otherwise requires:

3 (a) An "adult" is a person who has attained the age of
4 twenty-one years.

5 (b) A "bank" is a bank, trust company, national bank-
6 ing association, savings bank or industrial bank.

7 (c) A "broker" is a person lawfully engaged in the
8 business of effecting transactions in securities for the ac-
9 count of others. The term includes a bank which effects
10 such transactions. The term also includes a person law-
11 fully engaged in buying and selling securities for his own
12 account, through a broker or otherwise, as a part of a
13 regular business.

14 (d) "Court" means the circuit court.

15 (e) "The custodial property" includes:

16 (1) all securities and money under the supervision of
17 the same custodian for the same minor as a consequence
18 of a gift or gifts made to the minor in a manner prescribed
19 in this article;

20 (2) the income from the custodial property; and

21 (3) the proceeds, immediate and remote, from the sale,
22 exchange, conversion, investment, reinvestment or other
23 disposition of such securities, money and income.

24 (f) A "custodian" is a person so designated in a man-
25 ner prescribed in this article.

26 (g) A "guardian" of a minor includes the general
27 guardian, guardian, tutor or curator of his property, estate
28 or person.

29 (h) An "issuer" is a person who places or authorizes
30 the placing of his name on a security (other than as a
31 transfer agent) to evidence that it represents a share, par-
32 ticipation or other interest in his property or in an enter-
33 prise or to evidence his duty or undertaking to perform
34 an obligation evidenced by the security, or who becomes
35 responsible for or in place of any such person.

36 (i) A "legal representative" of a person is his executor
37 or the administrator, general guardian, guardian, com-
38 mittee, conservator, tutor or curator of his property or
39 estate.

40 (j) A "member" of a "minor's family" means any of
41 the minor's parents, grandparents, brothers, sisters, uncles

42 and aunts, whether of the whole blood or the half blood,
43 or by or through legal adoption.

44 (k) A "minor" is a person who has not attained the age
45 of twenty-one years.

46 (l) A "security" includes any note, stock, treasury
47 stock, bond, debenture, evidence of indebtedness, collat-
48 eral trust certificate, transferable share, voting trust cer-
49 tificate or, in general, any interest or instrument com-
50 monly known as a security, or any certificate of interest
51 or participation in, any temporary or interim certificate,
52 receipt or certificate of deposit for, or any warrant or
53 right to subscribe to or purchase, any of the foregoing.
54 The term does not include a security of which the donor
55 is the issuer. A security is in "registered form" when it
56 specifies a person entitled to it or to the rights it evidences
57 and its transfer may be registered upon books maintained
58 for that purpose by or on behalf of the issuer.

59 (m) A "transfer agent" is a person who acts as authen-
60 ticating trustee, transfer agent, registrar or other agent
61 for an issuer in the registration of transfers of its securi-
62 ties or in the issue of new securities or in the cancellation
63 of surrendered securities.

64 (n) A "trust company" is a bank authorized to exer-
65 cise trust powers in the state.

Sec. 2. *Manner of Making Gift.*—(a) An adult person
2 may, during his lifetime, make a gift of a security or
3 money to a person who is a minor on the date of the gift:

4 (1) if the subject of the gift is a security in registered
5 form, by registering it in the name of the donor, another
6 adult person or a trust company, followed, in substance,
7 by the words: "as custodian for

8 (name of minor)
9 under the West Virginia Gifts to Minors Act";

10 (2) if the subject of the gift is a security not in regis-
11 tered form, by delivering it to an adult person, other than
12 the donor, or a trust company, accompanied by a state-
13 ment of gift in the following form, in substance, signed by
14 the donor and the person designated as custodian:

15 "GIFT UNDER THE WEST VIRGINIA GIFTS TO
16 MINORS ACT

17 I, _____, hereby deliver
18 (name of donor)

19 to _____, as custodian
20 (name of custodian)

21 for _____ under the West
22 (name of minor)

23 Virginia Gifts to Minors Act, the following security(ies):
24 (insert an appropriate description of the security or se-
25 curities delivered sufficient to identify it or them)

26 _____
27 (signature of donor)

28 _____ hereby acknowledges
29 (name of custodian)

30 receipt of the above described security(ies) as custodian
31 for the above minor under the West Virginia Gifts to
32 Minors Act.

33 Dated: _____
34 (signature of custodian) "

35 (3) If the subject of the gift is money, by paying or
36 delivering it to a broker or a bank for credit to an account
37 in the name of the donor, another adult person or a bank
38 with trust powers, followed, in substance, by the words:
39 "as custodian for _____
40 (name of minor)

41 under the West Virginia Gifts to Minors Act".

42 (b) Any gift made in a manner prescribed in subsection
43 (a) may be made to only one minor and only one person
44 may be the custodian.

45 (c) A donor who makes a gift to a minor in a manner
46 prescribed in subsection (a) shall promptly do all things
47 within his power to put the subject of the gift in the
48 possession and control of the custodian, but neither the
49 donor's failure to comply with this subsection, nor his
50 designation of an ineligible person as custodian, nor re-
51 nunciation by the person designated as custodian affects
52 the consummation of the gift.

2 Sec. 3. *Effect of Gift.*—(a) A gift made in a manner
prescribed in this article is irrevocable and conveys to the

3 minor indefeasibly vested legal title to the security or
4 money given, but no guardian of the minor has any right,
5 power, duty or authority with respect to the custodial
6 property except as provided in this article.

7 (b) By making a gift in a manner prescribed in this
8 article, the donor incorporates in his gift all the provisions
9 of this article and grants to the custodian, and to any
10 issuer, transfer agent, bank, broker or third person dealing
11 with a person designated as custodian, the respective
12 powers, rights and immunities provided in this article.

Sec. 4. *Duties and Powers of Custodian.*—(a) The cus-
2 todian shall collect, hold, manage, invest and reinvest
3 the custodial property.

4 (b) The custodian shall pay over to the minor for
5 expenditure by him, or expend for the minor's benefit, so
6 much of or all the custodial property as the custodian
7 deems advisable for the support, maintenance, education
8 and benefit of the minor in the manner, at the time or
9 times, and to the extent that the custodian in his discre-
10 tion deems suitable and proper, with or without court
11 order, with or without regard to the duty of himself or
12 of any other person to support the minor or his ability to
13 do so, and with or without regard to any other income
14 or property of the minor which may be applicable or
15 available for any such purpose.

16 (c) The court, on the petition of a parent or guardian
17 of the minor or of the minor, if he has attained the age
18 of fourteen years, may order the custodian to pay over
19 to the minor for expenditure by him or to expend so
20 much of or all the custodial property as is necessary for
21 the minor's support, maintenance or education.

22 (d) To the extent that the custodial property is not
23 so expended, the custodian shall deliver or pay it over to
24 the minor on his attaining the age of twenty-one years or,
25 if the minor dies before attaining the age of twenty-one
26 years, he shall thereupon deliver or pay it over to the
27 estate of the minor.

28 (e) The custodian, notwithstanding statutes restricting
29 investments by fiduciaries, shall invest and reinvest the
30 custodial property as would a prudent man of discretion

31 and intelligence who is seeking a reasonable income and
32 the preservation of his capital, except that he may, in his
33 discretion and without liability to the minor or his estate,
34 retain a security given to the minor in a manner pre-
35 scribed in this article.

36 (f) The custodian may sell, exchange, convert or other-
37 wise dispose of custodial property in the manner, at the
38 time or times, for the price or prices and upon the terms
39 he deems advisable. He may vote in person or by general
40 or limited proxy a security which is custodial property.
41 He may consent, directly or through a committee or other
42 agent, to the reorganization, consolidation, merger, dis-
43 solution or liquidation of an issuer, a security which is
44 custodial property, and to the sale, lease, pledge or mort-
45 gage of any property by or to such an issuer, and to any
46 other action by such an issuer. He may execute and de-
47 liver any and all instruments in writing which he deems
48 advisable to carry out any of his powers as custodian.

49 (g) The custodian shall register each security which
50 is custodial property and in registered form in the name
51 of the custodian, followed, in substance, by the words:
52 "as custodian for.....under the West

53 (name of minor)

54 Virginia Gifts to Minors Act". The custodian shall hold
55 all money which is custodial property in an account with
56 a broker or in a bank in the name of the custodian, fol-
57 lowed, in substance, by the words: "as custodian for
58under the West Vir-

59 (name of minor)

60 ginia Gifts to Minors Act". The custodian shall keep all
61 other custodial property separate and distinct from his
62 own property in a manner to identify it clearly as custo-
63 dial property.

64 (h) The custodian shall keep records of all transactions
65 with respect to the custodial property and make them
66 available for inspection at reasonable intervals by a par-
67 ent or legal representative of the minor or by the minor,
68 if he has attained the age of fourteen years.

69 (i) A custodian has and holds as powers in trust, with
70 respect to the custodial property, in addition to the rights

71 and powers provided in this article, all the rights and
72 powers which a guardian has with respect to property
73 not held as custodial property.

Sec. 5. *Custodian's Expenses, Compensation, Bond and*
2 *Liabilities.*—(a) A custodian is entitled to reimbursement
3 from the custodial property for his reasonable expenses
4 incurred in the performance of his duties.

5 (b) A custodian may act without compensation for
6 his services.

7 (c) Unless he is a donor, a custodian may receive from
8 the custodial property compensation for his services de-
9 termined by

10 (1) A direction by the donor when the gift is made; or

11 (2) In lieu of a direction by the donor a sum equal to
12 five per cent of the gross income from the custodial prop-
13 erty.

14 (d) Except as otherwise provided in this article, a
15 custodian shall not be required to give a bond for the
16 performance of his duties.

17 (e) A custodian not compensated for his services is
18 not liable for losses to the custodial property unless they
19 result from his bad faith, intentional wrongdoing or gross
20 negligence or from his failure to maintain the standard of
21 prudence in investing the custodial property provided in
22 this article.

Sec. 6. *Exemption of Third Persons from Liability.*—No
2 issuer, transfer agent, bank, broker or other person acting
3 on the instructions of or otherwise dealing with any per-
4 son purporting to act as a donor or in the capacity of a
5 custodian is responsible for determining whether the
6 person designated by the purported donor or purporting
7 to act as a custodian has been duly designated or whether
8 any purchase, sale or transfer to or by or any other act
9 of any person purporting to act in the capacity of cus-
10 todian is in accordance with or authorized by this article,
11 or is obliged to inquire into the validity or propriety under
12 this article of any instrument or instructions executed or
13 given by a person purporting to act as a donor or in the
14 capacity of a custodian, or is bound to see to the applica-

15 tion by any person purporting to act in the capacity of a
16 custodian of any money or other property paid or de-
17 livered to him.

Sec. 7. *Resignation, Death or Removal of Custodian;*
2 *Bond; Appointment of Successor Custodian.*—(a) Only an
3 adult member of the minor's family, a guardian of the
4 minor or a trust company is eligible to become successor
5 custodian. A successor custodian has all the rights, powers,
6 duties and immunities of a custodian designated in a man-
7 ner prescribed by this article.

8 (b) A custodian, other than the donor, may resign and
9 designate his successor by:

10 (1) executing an instrument of resignation designating
11 the successor custodian; and

12 (2) causing each security which is custodial property
13 and in registered form to be registered in the name of the
14 successor custodian followed, in substance, by the words:
15 "as custodian for.....under the
16 (name of minor)
17 West Virginia Gifts to Minors Acts"; and

18 (3) delivering to the successor custodian the instru-
19 ment of resignation, each security registered in the name
20 of the successor custodian and all other custodial property,
21 together with any additional instruments required for
22 the transfer thereof.

23 (c) A custodian, whether or not a donor, may petition
24 the court for permission to resign and for the designation
25 of a successor custodian.

26 (d) If the person designated as custodian is not eligible,
27 renounces or dies before the minor attains the age of
28 twenty-one years, the guardian of the minor shall be
29 successor custodian. If the minor has no guardian, a don-
30 or, his legal representative, the legal representative of
31 the custodian, an adult member of the minor's family, or
32 the minor, if he has attained the age of fourteen years,
33 may petition the court for the designation of a successor
34 custodian.

35 (e) A donor, the legal representative of a donor, an
36 adult member of the minor's family, a guardian of the

37 minor or the minor, if he has attained the age of fourteen
38 years, may petition the court that, for cause shown in the
39 petition, the custodian be removed and a successor custo-
40 dian be designated or, in the alternative, that the custo-
41 dian be required to give bond for the performance of
42 his duties.

43 (f) Upon the filing of a petition as provided in this
44 section, the court shall grant an order, directed to the
45 persons and returnable on such notice as the court may
46 require, to show cause why the relief prayed for in the
47 petition should not be granted and, in due course, grant
48 such relief as the court finds to be in the best interests
49 of the minor.

Sec. 8. *Accounting by Custodian.*—(a) The minor, if he
2 has attained the age of fourteen years, or the legal repre-
3 sentative of the minor, an adult member of the minor's
4 family, or a donor or his legal representative may petition
5 the court for an accounting by the custodian or his legal
6 representative.

7 (b) The court, in a proceeding under this article or
8 otherwise, may require or permit the custodian or his
9 legal representative to account and, if the custodian is re-
10 moved, shall so require and order delivery of all custodial
11 property to the successor custodian and the execution of
12 all instruments required for the transfer thereof.

Sec. 9. *Construction.*—(a) This article shall be so con-
2 strued as to effectuate its general purpose to make uni-
3 form the law of those states which enact it.

4 (b) This article shall not be construed as providing an
5 exclusive method for making gifts to minors.

Sec. 10. *Short Title.*—This article may be cited as the
2 "West Virginia Gifts to Minors Act".

Sec. 11. *Severability.*—If any provision of this article or
2 the application thereof to any person or circumstances is
3 held invalid, the invalidity shall not affect other provi-
4 sions or applications of the article which can be given
5 effect without the invalid provision or application, and to
6 this end the provisions of this article are severable.

CHAPTER 87

(Senate Bill No. 174—By Mr. Moats and Mr. Jackson, of Lincoln)

AN ACT to amend article one, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-b, relating to photographing, microphotographing or reproducing on film or other process records, papers or documents.

[Passed February 27, 1937; in effect ninety days from passage. Approved by the Governor.]

Article 1. Legislative Acts and Resolutions; Public Records.

Section

7-b. Photographing, microphotographing or reproducing on film or other process records, papers or documents.

Be it enacted by the Legislature of West Virginia:

That article one, chapter fifty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven-b, to read as follows:

Section 7-b. *Photographing, Microphotographing or Reproducing on Film or Other Process Records, Papers or Documents.*—If any business, institution, member of a profession or calling, or any officer of a local governmental agency, including county officers, county boards of education and municipalities, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the

16 regular course of business unless held in a custodial or
17 fiduciary capacity or unless its preservation is required
18 by law: *Provided, however,* That destruction of records of
19 local governmental agencies shall also be contingent
20 upon the approval by those agencies of such disposition.
21 Such reproduction, when satisfactorily identified, is as
22 admissible in evidence as the original itself in any judi-
23 cial or administrative proceeding whether the original is
24 in existence or not, and an enlargement or facsimile of
25 such reproduction is likewise admissible in evidence if
26 the original reproduction is in existence and available
27 for inspection under direction of court. The introduction
28 of a reproduced record, enlargement or facsimile, does
29 not preclude admission of the original.

CHAPTER 88

(House Bill No. 121—By Mr. Brotherton)

AN ACT to amend and reenact section twenty-four, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state fire marshal's office and the tax to pay for the operation thereof.

[Passed February 15, 1957; in effect March 1, 1957. Approved by the Governor.]

Article 3. State Fire Marshal; Protection Against Fire.

Section

24. Fund for maintenance of office of state fire marshal.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 24. *Fund for Maintenance of Office of State Fire*
2 *Marshal.*—For the purpose of maintaining the office of

3 state fire marshal and paying the expenses incidental
4 thereto every insurance company other than life doing
5 business in this state, except farmers' mutual fire insur-
6 ance companies, shall pay to the state fire marshal annual-
7 ly on or before the first day of March, in addition to the
8 taxes now required by law to be paid by such companies,
9 one-half of one per cent of the net direct premium receipts
10 of such companies on insurance against the hazard of fire
11 and on that portion of all other net direct premiums
12 reasonably applicable to insurance against the hazard of
13 fire which are included in other coverages, and received
14 by it for insurance on property or risks in this state during
15 the calendar year next preceding as shown by their
16 annual statement under oath to the insurance department.
17 The money so received by the state fire marshal shall be
18 paid by him into the treasury where it shall be set aside
19 as a special fund for the maintenance of the office of state
20 fire marshal and the expenses incidental thereto. The
21 state shall not be liable in any manner for the salary of
22 the fire marshal, deputy fire marshal, assistant fire mar-
23 shal, clerk, or for the maintenance of such office, or any
24 expenses incidental thereto, and the same shall be payable
25 only from the special fund provided for in this section
26 or by appropriation or contribution.

27 In the event of a controversy as to the proper determi-
28 nation of the premium base on which this tax is to be
29 computed, a hearing may be had by said fire marshal on
30 the application of any interested person, corporation or
31 association, which hearing shall be held after reasonable
32 notice. Appeal from any finding or holding of said fire
33 marshal may be by petition to the circuit court of Kanawha
34 county within thirty days of such finding or holding.

CHAPTER 89

(House Bill No. 28—By Mr. Carr)

AN ACT to amend article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section two-b, making it lawful for a landowner, members of his family and his tenants to carry a gun at any time incident to their pursuits in caring for livestock and poultry on such landowner's lands.

[Passed February 5, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 3. General Provisions Respecting Game, Birds, Fish and Frogs.

Section

2-b. Carrying gun on landowner's land.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two-b, to read as follows:

Section 2-b. Carrying Gun on Landowner's Land.—

2 Notwithstanding any other provisions of this chapter, it
3 shall be lawful for a bona fide resident landowner of this
4 state, any member of said landowner's family and any
5 bona fide tenant of said landowner, to carry an uncased
6 gun at any time, whether accompanied by or without a
7 dog, in their regular pursuits in caring for and looking
8 after such landowner's livestock or poultry on his land
9 and on any lands leased or rented by him for livestock or
10 poultry husbandry purposes.

CHAPTER 90

(Senate Bill No. 187—By Mr. Chenoweth)

AN ACT to amend article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section five-a, relating to bow and arrow hunting, defining lawful and unlawful types of bows and arrows and where unlawful to shoot.

[Passed February 28, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 3. General Provisions Respecting Game, Birds, Fish and Frogs.

Section

5-a. Bow and arrow hunting; unlawful methods and devices.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-a, to read as follows:

Section 5-a. *Bow and Arrow Hunting; Unlawful Methods and Devices.*—(1) A long bow may be substituted for a gun during any season for which firearms are lawful: *Provided, however,* That it shall be unlawful to have both gun and bow in the field at the same time: *Provided further,* That it shall be unlawful to kill, or attempt to kill, any wild animal, wild bird, fish, frog or turtle with a crossbow.

(2) It shall be unlawful to kill, or attempt to kill, turkey, bear or deer with any arrow not equipped with a point having at least two sharp cutting edges measuring in excess of three-fourths of an inch wide.

(3) It shall be unlawful to kill, or attempt to kill, any wild animal, wild bird, fish, frog or turtle with an arrow having an explosive head or shaft.

(4) It shall be unlawful to shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance.

CHAPTER 91

(House Bill No. 407—By Mr. Cruikshank and Mr. Whetsell)

AN ACT to amend article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-b, relating to authorizing the issuance of operating licenses or permits for privately owned and operated commercial shooting preserves; the promulgation of such rules as may be necessary to carry out the provisions of the section; and for other purposes.

[Passed March 7, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 3. General Provisions Respecting Game, Birds, Fish and Frogs.

Section

12-b. Commercial shooting preserve.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-b, to read as follows:

Section 12-b. *Commercial Shooting Preserve.*—1. The

2 director is hereby authorized and empowered to issue
3 operating licenses or permits for commercial shooting pre-
4 serves, which shall be privately owned and operated, and
5 to make such rules as may be necessary and proper in
6 carrying out the purpose of this section.

7 2. Operating licenses or permits may be issued to any
8 person, association, or corporation for the operation of
9 commercial shooting preserves that meet the requirements
10 hereinafter prescribed.

11 (a) Each commercial shooting preserve shall contain a
12 minimum of three hundred acres in one tract of leased or

13 owned land (including water area, if any) and shall be
14 restricted to not more than three thousand contiguous
15 acres (including water area, if any), except that preserves
16 confined to the releasing of ducks only may be authorized
17 to operate with a minimum of fifty contiguous acres (in-
18 cluding water area).

19 (b) The exterior boundaries of each commercial shoot-
20 ing preserve shall be clearly defined and posted with signs
21 erected around the extremity at intervals of one hundred
22 fifty yards or less.

23 3. Game which may be hunted under this section on
24 which a more liberal season may be allowed, shall be con-
25 fined to artificially propagated quail, turkeys, pheasants,
26 chukar partridges, mallards and black ducks, and such
27 other species as the director may add from time to time.

28 Mallards and/or black ducks released on a commercial
29 shooting preserve must have had a one-fourth inch hole
30 punched in the outer web of the right foot before the birds
31 attain the age of six weeks.

32 4. Fees for commercial shooting preserve licenses or
33 permits shall be established at the rate of fifty dollars
34 per year for the first three hundred acres of shooting
35 preserve area, plus twenty-five dollars per year for each
36 additional one hundred acres or parts thereof.

37 5. The operating licenses or permits issued by the di-
38 rector shall entitle holders thereof, and their guests or
39 customers, to recover not more than eighty per cent of
40 the total number of each species of game bird released on
41 the premises each year, except mallard, black duck, ring-
42 necked pheasant, chukar partridge, and other non-native
43 game species upon which a one hundred per cent recovery
44 may be allowed.

45 6. Except for the required compliance with the restric-
46 tion on the maximum number of released birds that may
47 be recovered from each preserve each year, as provided
48 in paragraphs five and ten, shooting preserve operators
49 may establish their own shooting limitations and restric-
50 tions on the age, sex, and number of birds that may be
51 taken by each person.

52 7. In order to give a reasonable opportunity for a fair
53 return on a sizeable investment, a liberal season shall be
54 designated by the director during the six month period,
55 beginning October first and ending March thirty-first.

56 8. All harvested game shall be tagged prior to being
57 either consumed on the premises or removed therefrom,
58 such tags to remain affixed until the game actually is de-
59 livered to the point of consumption. The director shall
60 furnish numbered tags at nominal cost to shooting pre-
61 serve operators.

62 9. Each shooting preserve operator shall maintain a
63 registration book listing all names, addresses, and hunting
64 license numbers of all shooters; the date on which they
65 hunted; the amount of game and the species taken; and
66 the tag numbers affixed to each carcass. An accurate rec-
67 ord likewise must be maintained of the total number, by
68 species, of game birds and ducks raised and/or purchased,
69 and the date and number of all species released. These
70 records shall be open to inspection by a delegated rep-
71 resentative of the director at any reasonable time, and
72 shall be the basis upon which the game recovery limits in
73 paragraph five hereof shall be determined.

74 10. Any wild game found on commercial shooting pre-
75 serves may be harvested in accordance with applicable
76 game and hunting laws pertaining to open seasons, bag
77 and possession limits, and so forth, as are established regu-
78 larly by the director and the United States fish and wild-
79 life service.

80 11. State hunting licenses shall be required of all per-
81 sons hunting or shooting on shooting preserves. State
82 residents shall be licensed under the regularly established
83 game and hunting laws. Nonresidents shall be required
84 to possess a regular nonresident hunting license.

85 12. The director may revoke any shooting preserve
86 license or permit issued under the authority of this sec-
87 tion, when the licensee has been convicted of a violation
88 of any of the provisions of this section. After such revoca-
89 tion, a new license or permit may be issued if in the dis-
90 cretion of the director, the circumstances so warrant.

91 13. Any and all statutes, or parts thereof, in conflict
92 with or inconsistent with the provisions of this section
93 upon the date of its enactment are hereby repealed.

CHAPTER 92

(Senate Bill No. 186—By Mr. Chenoweth)

AN ACT to amend and reenact section two-1, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to bow and arrow hunting licenses.

[Passed February 27, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 7. Hunting and Fishing Licenses.

Section

2-1. Class L; nonresident state-wide bow and arrow hunting license; class M; resident state-wide bow and arrow hunting license.

Be it enacted by the Legislature of West Virginia:

That section two-1, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2-1. *Class L; Nonresident State-wide Bow and Arrow Hunting License; Class M; Resident State-wide Bow and Arrow Hunting License.*—A class L license shall be a nonresident bow and arrow hunting license and shall entitle the licensee to employ a long bow and arrow in taking game, fish, turtle and frogs in all counties of the state. It shall be issued only to citizens of the United States who are not residents of this state. The fee therefor shall be five dollars.

A class M license shall be a resident bow and arrow hunting license and shall entitle the licensee to employ a long bow and arrow in taking game, fish, frogs, and turtles in all counties of the state; this license to be in

14 addition to class A and class I hunting licenses. It shall be
15 issued only to citizens of the United States who are resi-
16 dents of this state. The fee therefor shall be one dollar.

CHAPTER 93

(Com. Sub. for Senate Bill No. 228—Originating in the
Senate Committee on Forestry and Conservation)

AN ACT to amend section three, article seven, chapter twenty
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to hunting and fishing
licenses.

[Passed March 9, 1957; in effect January 1, 1958. Approved by the Governor.]

Article 7. Hunting and Fishing Licenses.

Section

3. Where license applications made; compensation of persons issuing
licenses; alien permits.

Be it enacted by the Legislature of West Virginia:

That section three, article seven, chapter twenty of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:

Section 3. *Where License Applications Made; Compensa-
tion of Persons Issuing Licenses; Alien Permits.*—Per-
sons eligible for any class license shall make application
therefor, either in person or by agent, in writing or orally,
as follows:

(1) For class A, B, E, F, H, I, J, K, L and M licenses, to
any county clerk or to any other person authorized by the
director to issue licenses.

(2) For class D-1 and class D-2 licenses, to the county
clerk of any county bordering the Ohio river, or to any
other person in such county authorized by the director
to issue licenses.

13 (3) For class C license, to the commission; and for
14 class G license, to the commission, or its administrative
15 employees at state parks or state forests.

16 Every person making application for any license shall
17 pay, in addition to the license fees prescribed therefor
18 in the preceding sections of this article, an additional fee
19 of fifteen cents as compensation for the person issuing the
20 license: *Provided, however,* That no additional fee shall
21 be collected by any agent for issuing a national forest
22 hunting and trapping class I license, a national forest
23 fishing class J license, and only one fee of fifteen cents
24 shall be collected for issuing combination resident state-
25 wide hunting and fishing class A-B licenses. All such
26 additional fees received by any county clerk shall be paid
27 by him into the general county fund.

28 Aliens desiring to procure licenses shall first apply to
29 the director for a permit to secure such license. If the
30 director satisfies himself that the applicant is legally
31 entitled to such license, and will observe the laws of this
32 state, and particularly the provisions of this chapter, he
33 may issue the permit. Permits, once issued, shall remain
34 in force until revoked. No issuing officer shall be required
35 to issue or deliver any license unless the applicant in-
36 forms him that the licensee is duly qualified and eligible
37 to receive the class of license applied for, and payment of
38 the required fee is made to such officer.

CHAPTER 94

(Senate Bill No. 75—By Mr. Parker)

AN ACT to amend article nine, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen, relating to the disposition of funds received from the federal government on account of the leasing of lands for flood control, navigation, and allied purposes.

[Passed February 6, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 9. Forests.

Section

19. Disposition of flood control, navigation, and allied funds from the federal government.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nineteen, to read as follows:

Section 19. *Disposition of Flood Control, Navigation, and Allied Funds from the Federal Government.*—Receipts from the treasurer of the United States, paid to the state or its proper officers pursuant to direction of an act of Congress relating to disposition of funds received on account of the leasing of lands for flood control, navigation, and allied purposes, shall be allocated by the state auditor to each county in accordance with the method of allocation specified by the federal government. The state auditor shall transfer to the road commission fifty per cent of the funds so allocated to each county for the purpose of maintenance of secondary roads in the area or areas of the county in which such flooded lands are located. Fifty per cent of the funds so allocated to any county in which such lands are located shall be paid by the state auditor to the board of education of that county to be expended by the board for the benefit of the public schools of the county.

CHAPTER 95

(Com. Sub. for Senate Bill No. 181—Originating in the Senate Committee on the Judiciary)

AN ACT to amend and reenact sections two, five and eight, article twenty-three, chapter nineteen of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, and to amend article twenty-four of said chapter nineteen by adding thereto a new section, designated section six-a, all relating to West Virginia racing commission personnel and the licensing, management and control of horse race meetings and race tracks thereby.

[Passed March 4, 1957; in effect from passage. Approved by the Governor.]

Article

23. Horse Racing.

24. Race Tracks.

Be it enacted by the Legislature of West Virginia:

That sections two, five and eight, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that article twenty-four of said chapter nineteen be amended by adding thereto a new section, designated section six-a, all to read as follows:

Article 23. Horse Racing.

Section

2. Racing commission; qualifications and compensation of members, secretary, steward and employees.
5. Application for license; priority of racing dates; review.
8. Disposition of funds for payment of outstanding pari-mutuel tickets.

Section 2. *Racing Commission; Qualifications and Compensation of Members, Secretary, Steward and Employees.*
 2 —The compensation of the members of the commission
 3 shall not exceed the sum of forty dollars per day, and
 4 actual bona fide expenses, while actually engaged in the
 5 business of the commission, and shall not exceed the sum
 6 of four thousand dollars per annum in the aggregate for
 7 compensation. The commission shall, under the restric-
 8 tions and within the qualifications hereinafter set forth,
 9 appoint a secretary and steward, to represent the com-
 10 mission, and such additional help as shall be reasonably
 11 necessary to administer the provisions of this article, and
 12 shall, within the limits prescribed by the Legislature, fix

14 their compensation and actual expenses. The compensa-
15 tion and actual expenses of the members and employees
16 of the commission shall be paid from the funds in the
17 hands of the state treasurer collected from the license tax
18 on pari-mutuel wagering and shall be itemized in the bud-
19 get in the same manner as all other departments of the
20 state government, but no such expenses shall be paid un-
21 less an itemized account thereof, under oath, be first filed
22 with the state auditor.

23 (a) No person who directly or indirectly has an in-
24 terest in any manner whatsoever, including an interest
25 as owner, lessor, lessee, stockholder or employee, in any
26 race track, where horse race meetings may be held, shall
27 be eligible for appointment to the commission,

28 (b) No person while serving as a member of the Legisla-
29 ture, or as an elective officer of this state, shall be eligible
30 for appointment to the commission.

31 (c) No person convicted of an offense, which, under the
32 laws of this state or any other state or of the United States
33 of America, constitutes a felony or a violation of chapter
34 sixty-one, article four of this code, shall be eligible for ap-
35 pointment to the commission.

36 (d) No person shall knowingly be employed by the
37 commission in any capacity whatsoever who shall:

38 1. Directly, or indirectly, or in any capacity, own or
39 have an interest in any race track where horse race meet-
40 ings may be held, including an interest as owner, lessor,
41 lessee, stockholder or employee.

42 2. At the time of his employment as a racing official be
43 or have been within one year prior thereto, a member of
44 the Legislature or an elective officer of this state, unless
45 he is experienced and qualified as a racing official.

46 3. Have been prior to the time of his employment, or
47 shall be during the time of his employment, convicted of
48 an offense, which, under the laws of this state or any other
49 state or of the United States of America, constitutes a
50 felony or a violation of chapter sixty-one, article four of
51 this code.

52 4. In any manner have delegated to him the duties and

53 powers of the members of the commission, as director or
54 supervisor of racing, or in any other manner or capacity
55 whatsoever.

56 Any steward employed by the commission or by a
57 licensee thereof, shall be a person of integrity, and ex-
58 perience and qualified for such position by the generally
59 accepted practices and customs of horse racing in the
60 United States.

61 Any person violating any provision of this section shall
62 be guilty of a misdemeanor, and, upon conviction, shall
63 be confined in jail not less than six months nor more than
64 one year or be fined not less than five hundred nor more
65 than one thousand dollars, or, in the discretion of the
66 court, may be punished by both such fine and imprison-
67 ment. Venue of such offense shall be in the county, or any
68 one of the counties, wherein the person violating this
69 section carries out any duties of, or performs any work
70 for, the commission, which constitutes the basis of the
71 charge or complaint against him.

Sec. 5. *Application for License; Priority of Racing*
2 *Dates; Review.*—Any person desiring to conduct a horse
3 race meeting within the state of West Virginia to permit
4 or conduct pari-mutuel pools shall apply to the West Vir-
5 ginia racing commission for a license to do so. Such ap-
6 plication shall be filed with the commission at least thirty
7 days prior to the first day of each horse race meeting
8 which said person proposes to hold or conduct. The com-
9 mission shall prescribe blank forms in making such ap-
10 plications. Such applications shall specify the days upon
11 which said race meeting is to be conducted. It shall state
12 the name of the person making such application, the post-
13 office address of the person making such application, the
14 number of days he intends to hold or conduct such meet-
15 ing (which shall be successive week days, excluding Sun-
16 days), and the location of the place or track or enclosure
17 where he proposes to hold or conduct such race meeting.

18 No license shall be granted to any person, firm or cor-
19 poration, the owners, members, stockholders, officers or
20 directors of which shall consist of persons any one of

21 whom has heretofore been convicted, within ten years
22 prior to the date of such license application, of an offense
23 which, under the laws of this state, of any other state or
24 of the United States of America, shall constitute a felony
25 or a crime involving moral turpitude.

26 In fixing dates for race meetings at the various tracks
27 in this state the commission shall consider the racing
28 circuits with which the race tracks in this state are as-
29 sociated, or contiguous to, and shall also consider dates
30 which are calculated to increase the tax revenues accruing
31 from racing.

32 The commission shall promptly consider such applica-
33 tions and within ten days after the filing of such applica-
34 tion with the commission, shall grant or reject any ap-
35 plication for a license. If said license is refused, said com-
36 mission shall forthwith publicly state its reasons for the
37 refusal in writing, attach them to the application so re-
38 fused and immediately notify the applicant. Such refusal
39 and reasons for same shall, at all times, be subject to in-
40 spection upon application of anyone desiring to inspect
41 same. Said findings shall be subject to review by manda-
42 mus in any court of this state having jurisdiction, includ-
43 ing the circuit court of the county wherein the horse race
44 meeting is proposed to be held, with the right to appeal
45 to the supreme court of appeals in the manner prescribed
46 by law.

Sec. 8. *Disposition of Funds for Payment of Outstand-
2 ing Pari-Mutuel Tickets.*—All moneys held by any licensee
3 for payment of outstanding pari-mutuel tickets, if not
4 claimed within one hundred eighty days after the close
5 of any race meeting, shall be turned over by the licensee
6 to the commission within fifteen days after the expira-
7 tion of such one hundred eighty day period, and the
8 licensee shall give such information as the commission
9 may require concerning such outstanding and unredeem-
10 ed tickets. All such moneys shall be deposited by the com-
11 mission with the treasurer of the state of West Virginia,
12 to be kept by him in a special account to be known as
13 “West Virginia Racing Commission Special Account—Un-
14 redeemed Pari-Mutuel Tickets.” The commission shall

15 cause to be published one time, on the day following the
16 close of any race meeting, in some newspaper of general
17 circulation in the county in which such race meeting was
18 held, a notice to the holders of such unredeemed tickets,
19 notifying them to present such tickets for payment at the
20 office of the commission in the city of Charleston within
21 one hundred eighty days from the date of the publication
22 of such notice.

23 Any such tickets that shall not be presented for pay-
24 ment within one hundred eighty days from the date of the
25 publication of the notice shall thereafter be irredeemable,
26 and the moneys theretofore held for the redemption of
27 such tickets shall become the property of the state of West
28 Virginia, and be deposited to the credit of the general fund
29 of the state, and be expended in such manner as may be
30 provided by law.

31 The costs for the publication of the notice provided for
32 by this section shall be paid from the funds in the hands
33 of the state treasurer collected from the license tax on
34 pari-mutuel wagering, when not otherwise provided in
35 the budget; but no such costs shall be paid unless an item-
36 ized account thereof, under oath, be first filed with the
37 state auditor.

Article 24. Race Tracks.

Section

6-a. Restrictions on construction permits.

Section 6-a. *Restrictions on Construction Permits.*—No
2 construction permit which may be or has been issued
3 under the provisions of this article shall be transferred or
4 assigned in any manner whatsoever without the consent
5 of the commission. When a permit is issued for construc-
6 tion of a race track for running, trotting or other particu-
7 lar type or kind of horse race meeting, the owner, holder
8 or other person responsible for the race track constructed
9 under such permit may not convert or change the meeting
10 into a horse race meeting of another type or kind within
11 one year from and after the date on which construction is
12 completed and the first race meeting is held, whichever
13 is the later, but may, after expiration of such one year

14 period, convert or change the type or kind of meeting
15 with the consent of the commission entered of record.

16 The life of any construction permit issued under the
17 provisions of this article shall be limited to a period of
18 three months only: *Provided, however,* That if the com-
19 mission is satisfied that the holder or holders of such per-
20 mit has in good faith started construction of the proposed
21 race track, such permit may be extended for successive
22 periods of three months each but in no event shall the
23 aggregate time of the permit exceed a period of twenty-
24 four months from the date of the original permit. Any
25 construction permit issued and in effect on the effective
26 date of this section shall be included under and controlled
27 by the provisions of this section.

CHAPTER 96

(Senate Bill No. 335—By Mr. Nuckols)

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve, relating to the purchase, control and supervision of insurance on state properties, activities and responsibilities, creating a state board of insurance, and prescribing penalties for the violation thereof.

[Passed March 9, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 12. State Insurance.

Section

1. Intent and objects.
2. Definitions.
3. Creation, composition, qualifications and compensation of board.
4. Organization, meetings and reports of board.
5. Powers and duties of board.
6. State records; requirements; penalties.
7. Placement of insurance on state property, activities and responsibilities.

8. All powers, duties and responsibilities of the department of purchases pertaining to state insurance hereby transferred to state board of insurance.
9. Penalties for violation of article.
10. Repeal of inconsistent laws.
11. Interpretation and purpose; constitutionality.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twelve, to read as follows:

Section 1. *Intent and Objects.*—Recognition is given to
2 the fact that the state of West Virginia owns extensive
3 properties of varied types and descriptions represent-
4 ing the investment of vast sums of money; that the state
5 and its officials, agents and employees engage in many
6 governmental activities and services and incur and un-
7 dertake numerous governmental responsibilities and ob-
8 ligations; that such properties are subject to losses, dam-
9 age, destruction, risks and hazards and such activities and
10 responsibilities are subject to liabilities which can and
11 should be covered by a sound and adequate insurance
12 program; and that good business and insurance practices
13 and principles necessitate the centralization of responsi-
14 bility for the purchase, control and supervision of insur-
15 ance coverage on all state properties, activities and re-
16 sponsibilities and the cooperation and coordination of all
17 state officials, departments and employees in the develop-
18 ment and success of such a centralized state insurance
19 program. Wherefore, in order to accomplish these de-
20 sired ends and objectives, the provisions of this article
21 are hereby enacted into law in response to manifest needs
22 and requirements therefor and in the interest of the es-
23 tablishment and development of an adequate, econom-
24 ical and sound state insurance and bonding service on all
25 state property, activities and responsibilities.

Sec. 2. *Definitions.*—As used in this article, unless the
2 context otherwise clearly requires:

- 3 (a) "Board" means the "state board of insurance of
4 West Virginia."

5 (b) "Company" means and includes corporations, as-
6 sociations, partnerships and individuals.

7 (c) "Insurance" means all forms of insurance and
8 bonding services available for protection and indemnifi-
9 cation of the state and its officials, employees, properties,
10 activities and responsibilities against loss or damage or
11 liability, including fire, marine, casualty, and surety in-
12 surance.

13 (d) "Insurance company" means all insurers or insur-
14 ance carriers, including but not limited to stock insurance
15 companies, mutual insurance companies, reciprocal and
16 inter-insurance exchanges, and all other types of insur-
17 ers and insurance carriers, including life, accident, health,
18 fidelity, indemnity, casualty, hospitalization and other
19 types and kinds of insurance companies, organizations
20 and associations, but excepting and excluding workmen's
21 compensation coverage.

22 (e) "State property activities" and "state responsibili-
23 ties" shall mean and include all operations, boards, com-
24 missions, works, projects and functions of the state, its
25 properties, officials, agents and employees which, within
26 the scope and in the course of governmental employment,
27 may be subject to liability, loss, damage, risks and haz-
28 ards recognized to be and normally included within in-
29 surance and bond coverages.

30 (f) "State property" means all property belonging to
31 the state of West Virginia and any boards or commissions
32 thereof wherever situate and which is the subject of risk
33 or reasonably considered to be subject to loss or damage
34 or liability by any single occurrence of any event insured
35 against.

Sec. 3. *Creation, Composition, Qualifications, and Com-
2 pensation of Board.*—(a) There is hereby created the
3 "state board of insurance of West Virginia" which shall
4 be composed of three members appointed by the governor
5 with the advice and consent of the Senate. Each of the
6 members shall be a resident of West Virginia possessed
7 of not less than five years' experience in the business of
8 insurance and no more than two of such members shall

9 belong to any one political party. The three original
10 members of such board shall be appointed for terms of
11 one, two and three years, respectively, and each sub-
12 sequent appointment shall be for a term of four years.
13 In the event a vacancy occurs it shall be filled by ap-
14 pointment of the unexpired term. No member of the
15 board may be removed from office by the governor ex-
16 cept for official misconduct, incompetency, neglect of
17 duty, or gross immorality.

18 (b) The insurance commissioner of West Virginia
19 shall serve as secretary of the board without vote and
20 shall make available to the board the information, facili-
21 ties and services of the office of the state insurance com-
22 missioner.

23 (c) Each member of the board shall receive the sum of
24 twenty-five dollars per day for each day's services actu-
25 ally performed for such board as well as all necessary
26 expenses incurred in the performance of their duties, not
27 exceeding one hundred days in any one calendar year.
28 The auditor shall pay such compensation and expenses
29 upon requisition certified by the chairman from appro-
30 priations provided for such purposes.

Sec. 4. Organization, Meetings and Reports of Board.—

2 The board shall select one of its members as chairman
3 and shall meet in the office of the insurance commissioner
4 upon call of the chairman. The board shall keep records
5 of all of its proceedings which shall be public and open
6 to inspection, shall adopt a seal and shall exercise and
7 perform the duties prescribed by this article.

8 The board shall report in writing to the governor, leg-
9 islative auditor and budget director on or before the
10 thirty-first day of August of each year. Such report shall
11 contain a summary of the board's proceedings during the
12 preceding fiscal year including a detailed and itemized
13 statement and summary of all state insurance procured
14 by the board during such fiscal year.

*Sec. 5. Powers and Duties of Board.—*The board shall

2 have general supervision and control over the insurance
3 of all state property, activities and responsibilities, in-

4 cluding the acquisition and cancellation thereof; determi-
5 nation of amount and kind of coverage, included but not
6 limited to deductible forms of insurance coverage, inspec-
7 tions or examinations relating thereto, reinsurance, and
8 any and all matters, factors and considerations entering
9 into negotiations for advantageous rates on and coverage
10 of all such state property, activities and responsibilities.
11 Any policy of insurance purchased or contracted for by
12 the board shall provide that the insured shall be barred
13 and estopped from relying upon the constitutional im-
14 munity of the state of West Virginia against claims or
15 suits. The board may enter into any contracts necessary
16 to the execution of the powers granted to it by this article.
17 It shall endeavor to secure the maximum of protection
18 against loss, damage or liability to state property and on
19 account of state activities and responsibilities by proper
20 and adequate insurance coverage through the introduc-
21 tion and employment of sound and accepted methods of
22 protection and principles of insurance. It is empowered
23 and directed to make a complete survey of all presently
24 owned and subsequently acquired state property subject
25 to insurance coverage by any form of insurance, which
26 survey shall include and reflect inspections, appraisals,
27 exposures, fire hazards, construction, and any other ob-
28 jectives or factors affecting or which might affect the in-
29 surance protection and coverage required. It shall keep
30 itself currently informed on new and continuing state
31 activities and responsibilities within the insurance cover-
32 ages herein contemplated. The board shall work closely
33 in cooperation with the state fire marshal's office in ap-
34 plying the rules and regulations of that office insofar as
35 the appropriations and other factors peculiar to state
36 property will permit. The board is given power and au-
37 thority to make rules and regulations governing its func-
38 tions and operations and the procurement of state insur-
39 ance, but shall not make or promulgate any rules or reg-
40 ulations in contravention of or inconsistent with the laws
41 or rules and regulations governing the office of insurance
42 commissioner of West Virginia.

43 The board is hereby authorized and empowered to ne-
44 gotiate and effect settlement of any and all insurance

45 claims arising on or incident to losses of and damages to
46 state properties, activities and responsibilities hereunder
47 and shall have authority to execute and deliver proper
48 releases of all such claims when settled. The board may
49 adopt rules and procedures for handling, negotiating and
50 settlement of all such claims. All such settlements and
51 releases shall be effected with the knowledge and consent
52 of the attorney general.

Sec. 6. *State Records; Requirements; Penalties.*— (a) It
2 shall be the duty of every officer, department and em-
3 ployee of the state having custody or control of any
4 state property, activities or responsibilities, as defined in
5 section two of this article, to make a written report there-
6 of to the board, on forms prepared and prescribed by it,
7 briefly describing said property, activities or responsibili-
8 ties, showing the nature, location and estimated fair
9 market value of potential liability thereof, and stating
10 whether such property, activities or responsibilities are
11 covered by insurance and, if insured, the nature, amount
12 and contract expiration date of such insurance and the
13 name and address of the insuring company or companies.
14 Such reports shall be made annually on or before the first
15 day of May and separate reports shall be made on newly
16 acquired state property from time to time within thirty
17 days next following the acquisition thereof. When any
18 such insured state property is sold, destroyed or otherwise
19 disposed of, the officer, department or employee of the
20 state having had the custody or control thereof shall make
21 a written report of such sale, destruction or other disposi-
22 tion of such property to the board within thirty days next
23 following the date of sale, destruction or other disposi-
24 tion thereof.

25 (b) The board shall assemble and organize all pertinent
26 information and data received and obtained by it on new
27 and continuing state property, activities and responsibili-
28 ties within the insurance coverage herein contemplated,
29 and shall compile and currently maintain a summary rec-
30 ord thereon, in such form and detail as may be found
31 practicable, as basis for insurance services on all such
32 state property, activities and responsibilities.

2 *Sec. 7. Placement of Insurance on State Property, Activ-*
3 *ities and Responsibilities.*—(a) No officer, department or
4 employee of the state having control or custody of any
5 state property, or being in charge of any state activities,
6 or being charged with any state responsibilities as herein
7 contemplated, shall pay out any state money for the pur-
8 pose of insurance against loss, damage or liability to any
9 such state property or on account of any such state activ-
10 ity or responsibility or incur any obligation or indebted-
11 ness against the state for such insurance, except (1) upon
12 the board's prior approval and placement of such insur-
13 ance coverage and (2) its subsequent approval of invoices
14 and charges therefor.

15 (b) All state insurance shall be placed only with sol-
16 vent insurance companies licensed by the insurance com-
17 missioner to transact insurance in West Virginia.

18 (c) All state insurance shall be placed only through
19 agents duly licensed by the insurance commissioner of
20 West Virginia and no more than five per cent of the total
21 premium volume of state insurance shall be placed through
22 any one agent or agency. For the purpose of this para-
23 graph, agent or agency shall include all employees, rela-
24 tives, partners or affiliates out of the agency with whom
25 such insurance is placed. In addition thereto no more than
26 fifteen per cent of the total premium volume of state in-
27 surance shall be placed in agencies in any one county.

28 (d) No insurance shall be placed with any member of
29 the board, the state insurance commissioner, official, of-
30 ficer or employee of the state of West Virginia, member
31 of the Legislature, member or officer of any state or coun-
32 ty political party executive committee, nor with the
33 spouse, parent or child of any such person, nor with any
34 corporation, any stockholder of which falls within the
35 classes herein enumerated.

2 *Sec. 8. All Powers, Duties and Responsibilities of the*
3 *Department of Purchases Pertaining to State Insurance*
4 *Hereby Transferred to State Board of Insurance.*—On the
5 effective date of this article, all powers, duties and func-
6 tions vested in the department of purchases relating to

6 insurance on state properties, activities and responsibili-
7 ties and all records and equipment relating thereto shall
8 be transferred by the department of purchases to the state
9 board of insurance.

Sec. 9. *Penalties for Violation of Article.*—Any person
2 placing or aiding, abetting, or conspiring to place state in-
3 surance in violation of any provision of this article shall
4 be guilty of a misdemeanor and upon conviction thereof
5 shall be fined not to exceed one thousand dollars or im-
6 prisoned for a period not to exceed six months, or may be
7 punished by both such fine and imprisonment.

Sec. 10. *Repeal of Inconsistent Laws.*—All laws or parts
2 of laws inconsistent with the provisions of this article are
3 hereby repealed, except in cases where the plain meaning
4 and context hereof otherwise provide for coordinate in-
5 terpretation and application of the provisions of this article
6 with any other laws.

Sec. 11. *Interpretation and Purpose; Constitutionality.*
2 —The provisions of this article are considered remedial
3 and shall be liberally construed and interpreted so as to
4 effect and accomplish the general purposes and objectives
5 hereof. In the event any part or provision of the article be
6 held to be unconstitutional by any court of competent
7 jurisdiction, such holding and decision of the court shall
8 not affect the validity and constitutionality of the remain-
9 ing parts and provisions of the article.

CHAPTER 97

(House Bill No. 126—By Mr. England and Mr. Whaley)

AN ACT to repeal article five and article thirteen of chapter thirty-one, and to amend and reenact chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to insurance and prescribing penalties for the violation thereof.

[Passed March 8, 1957; in effect January 1, 1958. Approved by the Governor.]

Chapter 33. INSURANCE**Article**

1. Definitions.
2. Insurance Commissioner.
3. Licensing, Fees and Taxation of Insurers.
4. General Provisions.
5. Organization and Procedures of Domestic Stock and Mutual Insurers.
6. The Insurance Policy.
7. Assets and Liabilities.
8. Investments.
9. Administration of Deposits.
10. Rehabilitation and Liquidation.
11. Unfair Practices and Frauds.
12. Agents, Brokers, Solicitors and Excess Line.
13. Life Insurance.
14. Group Life Insurance.
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
17. Fire and Marine Insurance.
18. Casualty Insurance.
19. Surety Insurance.
20. Rates and Rating Organizations.
21. Reciprocal Insurers.
22. Farmers' Mutual Fire Insurance Companies.
23. Fraternal Benefit Societies.
24. Hospital Service Corporations and Medical Service Corporations.

Be it enacted by the Legislature of West Virginia:

That article five and article thirteen of chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and that chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article 1. Definitions**Section**

1. Insurance.
2. Insurer.
3. Person.
4. Transacting insurance.
5. Commissioner.
6. Domestic insurer.
7. Foreign insurer.
8. Alien insurer.
9. State; United States.
10. Kinds of insurance.
11. Reinsurance.
12. Agent.
13. Solicitor.
14. Broker.
15. Reciprocal insurance.
16. Policy.
17. Premium.

18. Stock insurer.
19. Mutual insurer.

Section 1. *Insurance*.—Insurance is a contract whereby
2 one undertakes to indemnify another or to pay a specified
3 amount upon determinable contingencies.

Sec. 2. *Insurer*.—Insurer is every person engaged in the
2 business of making contracts of insurance.

Sec. 3. *Person*.—Person includes an individual, com-
2 pany, insurer, association, organization, society, reciprocal,
3 partnership, syndicate, business trust, corporation or any
4 other legal entity.

Sec. 4. *Transacting Insurance*.—Transacting insurance
2 includes solicitation and inducement, preliminary nego-
3 tiations, effecting a contract of insurance and transaction
4 of matters subsequent to effecting the contract and arising
5 out of it.

Sec. 5. *Commissioner*.—Commissioner means the insur-
2 ance commissioner of West Virginia.

Sec. 6. *Domestic Insurer*.—A domestic insurer is an in-
2 surer formed under the laws of West Virginia.

Sec. 7. *Foreign Insurer*.—A foreign insurer is an insurer
2 formed under the laws of the United States or of another
3 state of the United States.

Sec. 8. *Alien Insurer*.—An alien insurer is an insurer
2 formed under the laws of a country other than the United
3 States.

Sec. 9. *State; United States*.—State means any state,
2 commonwealth, territory, or district of the United States.
3 United States includes the states, territories, districts and
4 commonwealths thereof.

Sec. 10. *Kinds of Insurance—Life; Accident and Sick-
2 ness; Fire; Marine; Casualty; Surety*.—The following
3 definitions of kinds of insurance are not mutually exclu-
4 sive and, if reasonably adaptable thereto, a particular
5 coverage may be included under one or more of such
6 definitions:

7 (a) *Life Insurance*.—Life insurance is insurance on hu-

8 man lives including endowment benefits, additional bene-
9 fits in the event of death or dismemberment by accident
10 or accidental means, additional benefits for disability, and
11 annuities.

12 (b) Accident and Sickness—Accident and sickness in-
13 surance is insurance against bodily injury, disability or
14 death by accident or accidental means, or the expense
15 thereof, or against disability or expense resulting from
16 sickness, and insurance relating thereto.

17 (c) Fire—Fire insurance is insurance on real or per-
18 sonal property of every kind and interest therein, against
19 loss or damage from any or all hazard or cause, and
20 against loss consequential upon such loss or damage, other
21 than noncontractual liability for any such loss or damage.
22 Fire insurance shall also include miscellaneous insurance
23 as defined in paragraph (e) (11) of this section.

24 (d) Marine—Marine insurance is insurance:

25 (1) against any and all kinds of loss or damage to
26 vessels, craft, aircraft, cars, automobiles and vehicles of
27 every kind, as well as all goods, freight, cargoes, mer-
28 chandise, effects, disbursements, profits, moneys, bullion,
29 precious stones, securities, choses in action, evidences of
30 debt, valuable papers, bottomry and respondentia inter-
31 ests and all other kinds of property and interests therein,
32 in respect to, appertaining to or in connection with any
33 and all risks or perils of navigation, transit, or transpor-
34 tation, including war risks, on or under any seas or other
35 waters, on land (above or below ground), or in the air,
36 or while being assembled, packed, crated, baled, com-
37 pressed or similarly prepared for shipment or while
38 awaiting the same or during any delays, storage, trans-
39 shipment, or reshipment incident thereto, including
40 marine builders' risks and all personal property floater
41 risks;

42 (2) against any and all kinds of loss or damage to
43 person or to property in connection with or appertaining
44 to a marine, inland marine, transit or transportation in-
45 surance, including liability for loss of or damage to either,
46 arising out of or in connection with the construction, re-
47 pair, operation, maintenance or use of the subject matter

48 of such insurance (but not including life insurance or
49 surety bonds nor insurance against loss by reason of
50 bodily injury to the person arising out of the ownership,
51 maintenance or use of automobiles);

52 (3) against any and all kinds of loss or damage to
53 precious stones, jewels, jewelry, gold, silver and other
54 precious metals, whether used in business or trade or
55 otherwise and whether the same be in course of trans-
56 portation or otherwise;

57 (4) against any and all kinds of loss or damage to
58 bridges, tunnels and other instrumentalities of transpor-
59 tation and communication (excluding buildings, their
60 furniture and furnishings, fixed contents and supplies held
61 in storage) unless fire, windstorm, sprinkler leakage, hail,
62 explosion, earthquake, riot or civil commotion or any or
63 all of them are the only hazards to be covered;

64 (5) against any and all kinds of loss or damage to
65 piers, wharves, docks and slips, excluding the risks of
66 fire, windstorm, sprinkler leakage, hail, explosion, earth-
67 quake, riot and civil commotion and each of them;

68 (6) against any and all kinds of loss or damage to other
69 aids to navigation and transportation, including dry docks
70 and marine railways, dams and appurtenant facilities for
71 control of waterways;

72 (7) marine protection and indemnity insurance, which
73 is insurance against, or against legal liability of the in-
74 sured for, loss, damage or expense arising out of, or inci-
75 dent to, the ownership, operation, chartering, mainte-
76 nance, use, repair or construction of any vessel, craft or
77 instrumentality in use in ocean or inland waterways, in-
78 cluding liability of the insured for personal injury, illness
79 or death or for loss of or damage to the property of an-
80 other person.

81 (e) Casualty—Casualty insurance includes:

82 (1) Vehicle insurance, which is insurance against loss
83 of or damage to any land vehicle or aircraft or any draft
84 or riding animal or to property while contained therein
85 or thereon or being loaded therein or therefrom, from
86 any hazard or cause, and against any loss, liability
87 or expense resulting from or incident to ownership, main-

88 tenance or use of any such vehicle, aircraft or animal;
89 together with insurance against accidental death or acci-
90 dental injury to individuals, including the named insured,
91 while in, entering, alighting from, adjusting, repairing or
92 cranking, or caused by being struck by any vehicle, air-
93 craft or draft or riding animal, if such insurance is issued
94 as a part of insurance on the vehicle, aircraft or draft or
95 riding animal.

96 (2) Liability insurance, which is insurance against
97 legal liability for the death, injury, or disability of any
98 human being, or for damage to property; and provision
99 for medical, hospital, surgical, disability benefits to in-
100 jured persons and funeral and death benefits to depend-
101 ents, beneficiaries or personal representatives of persons
102 killed, irrespective of legal liability of the insured, when
103 issued as an incidental coverage with or supplemental to
104 liability insurance.

105 (3) Burglary and theft insurance, which is insurance
106 against loss or damage by burglary, theft, larceny, rob-
107 bery, forgery, fraud, vandalism, malicious mischief, confis-
108 cation, or wrongful conversion, disposal, or concealment,
109 or from any attempt at any of the foregoing, including
110 supplemental coverages for medical, hospital, surgical and
111 funeral benefits sustained by the named insured or other
112 person as a result of bodily injury during the commission
113 of a burglary, robbery, or theft by another; also insurance
114 against loss of or damage to moneys, coins, bullion, secu-
115 rities, notes, drafts, acceptances, or any other valuable
116 papers and documents, resulting from any cause.

117 (4) Personal property floater insurance, which is insur-
118 ance upon personal effects against loss or damage from
119 any cause.

120 (5) Glass insurance, which is insurance against loss
121 or damage to glass, including its lettering, ornamentation,
122 and fittings.

123 (6) Boiler and machinery insurance, which is insur-
124 ance against any liability and loss or damage to property
125 or interest resulting from accidents to or explosion of
126 boilers, pipes, pressure containers, machinery, or appa-
127 ratus, and to make inspection of and issue certificates of

128 inspection upon boilers, machinery, and apparatus of any
129 kind, whether or not insured.

130 (7) Leakage and fire extinguishing equipment insur-
131 ance, which is insurance against loss or damage to any
132 property or interest caused by the breakage or leakage
133 of sprinklers, hoses, pumps, and other fire extinguishing
134 equipment or apparatus, water mains, pipes and contain-
135 ers, or by water entering through leaks or openings in
136 buildings, and insurance against loss or damage to such
137 sprinklers, hoses, pumps and other fire extinguishing
138 equipment or apparatus.

139 (8) Credit insurance, which is insurance against loss
140 or damage resulting from failure of debtors to pay their
141 obligations to the insured.

142 (9) Malpractice insurance, which is insurance against
143 legal liability of the insured, and against loss, damage, or
144 expense incidental to a claim of such liability, and includ-
145 ing medical, hospital, surgical, and funeral benefits to
146 injured persons, irrespective of legal liability of the in-
147 sured, arising out of the death, injury, or disablement of
148 any person, or arising out of damage to the economic in-
149 terest of any person, as the result of negligence in render-
150 ing expert, fiduciary, or professional service.

151 (10) Entertainment insurance, which is insurance in-
152 demnifying the producer of any motion picture, television,
153 radio, theatrical, sport, spectacle; entertainment, or sim-
154 ilar production, event, or exhibition against loss from
155 interruption, postponement, or cancellation thereof due
156 to death, accidental injury, or sickness of performers, par-
157 ticipants, directors, or other principals.

158 (11) Miscellaneous insurance, which is insurance
159 against any other kind of loss, damage, or liability prop-
160 erly a subject of insurance and not within any other kind
161 of insurance as defined in this chapter, if such insurance
162 is not disapproved by the commissioner as being contrary
163 to law or public policy.

164 (f) Surety—Surety insurance includes:

165 (1) Fidelity insurance, which is insurance guaranteeing
166 the fidelity of persons holding positions of public or pri-
167 vate trust.

168 (2) Insurance guaranteeing the performance of con-
169 tracts, other than insurance policies, and guaranteeing and
170 executing bonds, undertakings, and contracts of surety-
171 ship.

172 (3) Insurance indemnifying banks, bankers, brokers,
173 financial or monied corporations or associations against
174 loss, resulting from any cause, of bills of exchange, notes,
175 bonds, securities, evidences of debt, deeds, mortgages,
176 warehouse receipts or other valuable papers, documents,
177 money, precious metals and articles made therefrom,
178 jewelry, watches, necklaces, bracelets, gems, precious and
179 semi-precious stones, including any loss while they are
180 being transported in armored motor vehicles, or by mes-
181 senger, but not including any other risks of transportation
182 or navigation, and also insurance against loss or damage
183 to such an insured's premises or to his furnishings, fix-
184 tures, equipment, safes and vaults therein, caused by
185 burglary, robbery, theft, vandalism or malicious mischief,
186 or any attempt to commit such crimes.

187 (4) Title insurance, which is insurance of owners of
188 property or others having an interest therein, or liens or
189 encumbrances thereon, against loss by encumbrance, de-
190 fective title, invalidity or adverse claim to title.

Sec. 11. *Reinsurance*.—Reinsurance is a contract of in-
2 demnity against liability by which an insurer procures
3 another insurer to insure it against loss or liability by
4 reason of the original insurance.

Sec. 12. *Agent*.—An insurance agent is an individual
2 appointed by an insurer to solicit, negotiate, effect or
3 countersign insurance contracts in its behalf.

Sec. 13. *Solicitor*.—An insurance solicitor is an indi-
2 vidual appointed and authorized by an agent to solicit
3 and receive applications for insurance as a representative
4 of such agent.

Sec. 14. *Broker*.—A broker is an individual who for
2 compensation in any manner solicits, negotiates or pro-
3 cures insurance or the renewal or continuance thereof on
4 behalf of insureds or prospective insureds.

2 Sec. 15. *Reciprocal Insurance*.—Reciprocal insurance is
3 insurance resulting from an inter-exchange among per-
4 sons known as subscribers of reciprocal agreements of
5 indemnity, the inter-exchange being effected through an
6 attorney-in-fact common to all such persons, and the
7 group of such subscribers being a reciprocal insurer.

2 Sec. 16. *Policy*.—Policy means the contract effecting
3 insurance, or the certificate thereof, by whatever name
4 called, and includes all clauses, riders, endorsements and
5 papers attached thereto and a part thereof.

2 Sec. 17. *Premium*.—Premium is the consideration for
3 insurance, by whatever name called.

2 Sec. 18. *Stock Insurer*.—Stock insurer is an incorporated
3 insurer with capital divided into shares and owned by its
4 shareholders.

2 Sec. 19. *Mutual Insurer*.—Mutual insurer is an incorpo-
3 rated insurer without permanent capital stock and the
4 governing body of which is elected by the policyholders.

Article 2. Insurance Commissioner

Section

1. Office continued; appointment, qualification and term.
2. Commissioner's compensation and expenses; officers' assistants.
3. General duties of commissioner.
4. Authority to take depositions and subpoena witnesses and records.
5. Witness fees.
6. Service of subpoena; compelling compliance.
7. Immunity of witness.
8. Records of insureds.
9. Examination of insurers and others; access to books, records, etc.
10. Rules and regulations.
11. Enforcement of orders; revocation of licenses; court action.
12. Notice.
13. Hearings.
14. Judicial review.
15. Annual report by commissioner.

2 Section 1. *Office Continued; Appointment, Qualification*
3 *and Term*.—There is hereby continued in effect the state
4 agency heretofore created and known as the "Insurance
5 Commissioner of West Virginia" which agency shall con-
6 sist of an insurance commissioner and such employees
7 as may be authorized by law. The term of the present
8 commissioner shall continue until July first, one thou-
9 sand nine hundred fifty-nine. All appointments to said

9 office made thereafter shall be for a period of six years,
10 except that in case of a vacancy the appointment shall
11 be made to fill the unexpired term. The commissioner
12 shall be a citizen and resident of this state and shall be
13 appointed by the governor, by and with the advice and
14 consent of the senate. Before taking the oath of office
15 the commissioner shall sever all connections either direct
16 or indirect with any and all insurers subject to his super-
17 vision and with any person representing any such insurer,
18 except as a policyholder or claimant.

*Sec. 2. Commissioner's Compensation and Expenses; Of-
2 fice; Assistants.*—The commissioner shall receive an an-
3 nual salary of at least nine thousand dollars and actual
4 expenses incurred in the performance of official business,
5 which compensation shall be in full for all services. The
6 office of the commissioner shall be maintained in the
7 capitol or other suitable place in Charleston. The com-
8 missioner may employ such persons and incur such ex-
9 penses as may be necessary in the discharge of his duties
10 and shall fix the compensation of such employees, but
11 such compensation shall not exceed the appropriation
12 therefor. All compensation for salaries and expenses of the
13 commissioner and his employees shall be paid monthly
14 out of the state treasury by requisition upon the auditor,
15 properly certified by the commissioner.

Sec. 3. General Duties of Commissioner.—The commis-
2 sioner shall enforce the provisions of this chapter and per-
3 form the duties required of him thereunder; shall affix his
4 official seal to all documents and papers required to be
5 filed in other states by domestic insurers and to other
6 papers when an official seal is required; and shall on or
7 before the tenth day of each month pay into the state
8 treasury all fees and monies which he has received during
9 the preceding calendar month.

*Sec. 4. Authority to take Depositions and Subpoena Wit-
2 nesses and Records.*—The commissioner, or any person
3 conducting a hearing or investigation by his authority,
4 shall have power to take depositions, subpoena witnesses
5 and compel their attendance, administer oaths, examine

6 any person under oath, compel any person to subscribe to
7 his testimony after it has been correctly reduced to writ-
8 ing and require the production of any books, papers,
9 records, correspondence or other documents which he
10 deems relevant to the inquiry.

Sec. 5. *Witness Fees.*—No person shall be excused from
2 attending and testifying in obedience to a subpoena issued
3 hereunder on the ground of failure of tender or payment
4 of a witness fee or mileage fee unless the witness makes
5 demand for such payment as a condition precedent to the
6 giving of testimony or the production of documents re-
7 quired by the subpoena, and unless such payment is not
8 thereupon made. No insurer, agent, broker, solicitor or
9 other person subject to the provisions of this chapter
10 whose conduct, condition or practices are being investi-
11 gated, and no officer, director or employee of any such
12 person, shall be entitled to witness or mileage fees. In
13 the event that witness or mileage fees are demanded and
14 paid, the amount of same shall be determined as ten
15 dollars for each day of attendance and ten cents per mile
16 for each mile necessarily traveled to the place of attend-
17 ance, and the same for returning. The sum to which a
18 witness is entitled shall be paid out of the treasury in any
19 case in which the attendance is for the commissioner. In
20 all other cases, it shall be paid by the person at whose
21 instance the summons is issued.

Sec. 6. *Service of Subpoena; Compelling Compliance.*—
2 The subpoena shall be served in the manner as if issued
3 from a circuit court unless otherwise provided. In case a
4 person refuses to obey any subpoena issued hereunder or
5 to testify with respect to any matter concerning which he
6 may be lawfully interrogated, the commissioner or his
7 representative may invoke the aid of any circuit court in
8 order that the testimony or evidence be produced. Upon
9 proper showing, such court shall issue a subpoena or order
10 requiring such person to appear before the commissioner
11 or his representative and produce all evidence and give all
12 testimony touching the matter in question. A person fail-
13 ing to obey such order may be punished by such court
14 as for contempt.

Sec. 7. *Immunity of Witness.*—If any person shall ask to
2 be excused from attending and testifying or from pro-
3 ducing any books, papers, records, correspondence or other
4 documents at any hearing conducted pursuant to this
5 chapter or in any cause or proceeding instituted by the
6 commissioner pursuant to this chapter on the ground that
7 the testimony or evidence required of him may tend to
8 incriminate him or subject him to a penalty or forfeiture,
9 and shall notwithstanding be directed by the commissioner
10 to give such testimony or produce such evidence, he must
11 none the less comply with such direction, but he shall not
12 thereafter be prosecuted or subjected to any penalty or
13 forfeiture for or on account of any matter or thing concern-
14 ing which he may testify or produce evidence, pursuant
15 thereto, and no testimony so given or evidence produced
16 shall be received against him upon any criminal action,
17 investigation or proceeding: *Provided, however,* That no
18 such individual so testifying shall be exempt from prosecu-
19 tion or punishment for any perjury or false swearing, com-
20 mitted by him while so testifying and the testimony or
21 evidence so given or produced shall be admissible against
22 him upon any criminal action, investigation or proceeding
23 concerning such perjury or false swearing, nor shall he be
24 exempt from the refusal, revocation or suspension of any
25 license, permission or authority conferred, or to be con-
26 ferred, pursuant to this chapter. Any such individual may
27 execute, acknowledge and file in the office of the com-
28 missioner a statement expressly waiving such immunity or
29 privilege in respect to any transaction, matter or thing
30 specified in such statement and thereupon the testimony
31 of such person or such evidence in relation to such trans-
32 action, matter or thing may be received or produced before
33 any judge or justice, court, tribunal, grand jury or other-
34 wise, and if so received or produced such individual shall
35 not be entitled to any immunity or privilege on account of
36 any testimony he may so give or evidence so produced.

Sec. 8. *Records of Insureds.*—Upon request of the com-
2 missioner any person in West Virginia who is the insured
3 under any policy issued by an insurer upon a subject of
4 insurance resident, located or to be performed in West Vir-

5 ginia, shall produce for examination all policies and other
6 documents evidencing and relating to such insurance, and
7 shall disclose the amount of the gross premiums paid or
8 agreed to be paid for the insurance, all persons through
9 whom such insurance was procured or who participated in
10 the transaction in any manner, and such other information
11 relative to the placing of such insurance as may reason-
12 ably be required.

Sec. 9. *Examination of Insurers and Others; Access to*
2 *Books, Records, etc.*—(a) The commissioner or his ac-
3 credited examiners shall, at least once each three years,
4 visit each domestic insurer and thoroughly examine its fi-
5 nancial condition and methods of doing business and as-
6 certain whether it has complied with all the laws and
7 regulations of this state; all expenses of such examination
8 to be borne by such insurer. The commissioner at such
9 times as he deems necessary may cause an examination to
10 be conducted of any foreign or alien insurer licensed to
11 transact insurance in this state; all expenses of such ex-
12 amination to be borne by such insurer. The commissioner
13 shall make a full written report of each such examination
14 of an insurer, certified to by the commissioner or the ex-
15 aminer in charge of such examination. The commissioner
16 shall furnish a copy of the report to the insurer examined
17 not less than ten days prior to filing the same in his office.
18 If such insurer so requests in writing, within such ten-day
19 period, the commissioner shall consider the objections of
20 such insurer to the report as proposed, and shall not so file
21 the report until after such modifications, if any, have been
22 made therein as the commissioner deems proper. The re-
23 port, when filed, shall be admissible in evidence in any
24 action or proceeding brought by the commissioner against
25 the insurer examined, or its officers or agents, and shall be
26 prima facie evidence of the facts stated therein. The com-
27 missioner or his examiners may at any time testify and
28 offer other proper evidence as to information secured dur-
29 ing the course of an examination, whether or not a written
30 report of the examination has at that time been either
31 made, served, or filed in the commissioner's office. The ex-
32 amination of an alien insurer shall be limited to its United

33 States business. In lieu of making his own examination,
34 the commissioner may accept a full report of the last
35 recent examination of a foreign or alien insurer, certified
36 to by the insurance supervisory official of the state of
37 domicile of a foreign insurer or the state of entry into the
38 United States of an alien insurer.

39 (b) The commissioner may also cause to be examined
40 at such times as he deems necessary the books, records,
41 papers, documents, correspondence and methods of doing
42 business of any agent, broker or solicitor licensed by this
43 state.

44 (c) For such purposes the commissioner, his deputies
45 and employees shall have free access to all books, records,
46 papers, documents and correspondence of all such insurers
47 (whether domestic, foreign or alien), agents, brokers and
48 solicitors wherever such books, records, papers, documents
49 and records are situate.

50 (d) The commissioner may revoke the license of any
51 such insurer, agent, broker or solicitor who refuses to
52 submit to such examination.

53 (e) The commissioner may withhold from public in-
54 spection any examination or investigation report for so
55 long as he deems prudent.

Sec. 10. *Rules and Regulations.*—The commissioner is
2 authorized to promulgate and adopt such rules and regu-
3 lations relating to insurance as are necessary to discharge
4 his duties and exercise his powers and to effectuate the
5 provisions of this chapter and to protect and safeguard the
6 interests of policyholders and the public of this state.

Sec. 11. *Enforcement of Orders; Revocation of Licenses;*
2 *Court Action.*—In addition to examinations and investiga-
3 tions expressly authorized by this chapter, the commis-
4 sioner may conduct such examinations and investigation
5 of insurance matters as he may deem proper to determine
6 whether any person has violated any provision of this
7 chapter or to secure information useful in the lawful
8 administration of his duties. If the commissioner deter-
9 mines, after notice and hearing, that any person is trans-
10 acting insurance in an illegal, improper or unjust manner
11 or is failing to pay losses and obligations when they

12 become due, excepting claims to which there is a substan-
13 tial defense, he may order such person to discontinue such
14 illegal, improper or unjust manner of transacting insur-
15 ance or may order such person to adjust and pay his obli-
16 gations as they become due. If any person shall fail or
17 refuse within twenty days after notice to obey such order,
18 the commissioner may revoke any license issued by him
19 and held by such person and in addition may apply to the
20 circuit court, or the judge thereof in vacation, having
21 jurisdiction for an injunction or the appointment of a
22 receiver, or for both, and such court or judge may enforce
23 such order of the commissioner by injunction or by ap-
24 pointment of a receiver to take charge of the affairs and
25 property of such person, or both, and may make such
26 further orders as may be necessary and proper to effectuate
27 such injunction or receivership.

Sec. 12. *Notice.*—Whenever under the provisions of this
2 chapter the commissioner is required to give notice to any
3 person the service of such notice shall be deemed proper
4 and effective with regard to any licensee of the commis-
5 sioner (including insurers, agents, brokers and solicitors)
6 or any employee of such licensee when such notice directed
7 to such person to be notified shall have been deposited in
8 the United States mails, postage prepaid, addressed to
9 the principal place of business or residence of such licensee
10 as last of record in the commissioner's office. The verified
11 return of the person depositing such notice in the mails
12 as to the fact of such mailing shall be proof of service.
13 Notice to a person other than a licensee or employee of a
14 licensee shall be served in the manner provided by law
15 for service of process in civil actions and such manner of
16 service may also be used and shall constitute effective
17 notice to a licensee or employee of a licensee.

Sec. 13. *Hearings.*—The commissioner may call and hold
2 hearings for any purpose deemed necessary by him for the
3 performance of his duties. He shall hold hearings when
4 required by the provisions of this chapter or upon a written
5 demand therefor by a person aggrieved by any act or
6 failure to act by the commissioner or by any rule, regu-
7 lation or order of the commissioner. Such demand shall

8 specify the grounds to be relied upon as a basis for the
9 relief to be requested at such hearing and such hearing
10 shall be held within forty-five days of receipt by the com-
11 missioner of written demand therefor, unless postponed
12 to a later date by mutual agreement. The commissioner
13 may in his discretion stay the effect of any order, rule or
14 regulation pending hearing. The commissioner shall give
15 at least fifteen days notice of the time, place and matters
16 to be considered at a hearing to all persons directly affect-
17 ed by such hearing. The commissioner shall allow any
18 person directly affected by the hearing to appear in person
19 and by counsel, to be present during the giving of all
20 evidence, to have a reasonable opportunity to inspect all
21 documentary evidence, to examine witnesses and present
22 relevant evidence, and to have subpoenas issued by the
23 commissioner to compel attendance of witnesses and pro-
24 duction of evidence in his behalf. Formal rules of pleading
25 or evidence need not be observed at any hearing. Upon
26 written request seasonably made by a person directly
27 affected by a hearing, and at such person's expense, or
28 upon his own motion and expense, the commissioner shall
29 cause a full stenographic record of the hearing to be made
30 by a competent reporter. If further requested in writing
31 by a person directly affected by such hearing, the com-
32 missioner shall cause such record to be transcribed and
33 made a part of the official record of the hearing, at the
34 expense of such person or may do so at his own motion
35 and expense, and shall furnish a copy thereof to any
36 party directly affected by such hearing at the request and
37 expense of such party. Within forty-five days after com-
38 pletion of a hearing, unless the time be extended by
39 mutual consent, the commissioner shall enter an order
40 containing his findings of fact and conclusions upon the
41 subject matter of such hearing. Such order may affirm,
42 modify or nullify action theretofore taken or may pre-
43 scribe new action within the scope of the notice of hearing,
44 and a copy thereof shall be mailed to all persons directly
45 affected by such hearing. In the discretion of the com-
46 missioner a rehearing may be granted to any party to a
47 hearing upon written request filed with the commissioner

48 within thirty days of the mailing of such order. Costs of
49 any hearing or rehearing for the attendance of witnesses,
50 service of subpoenas, and stenographic record and trans-
51 cript may be taxed by the commissioner to any party or
52 parties against whom he shall find and may be recovered
53 in a civil action.

Sec. 14. *Judicial Review*.—An appeal from the com-
2 missioner shall be taken only from an order entered after
3 hearing or an order refusing a hearing. Any person
4 aggrieved by any such order may, within thirty days after
5 the order has been mailed or delivered to the persons
6 entitled to receive the same, or within thirty days after
7 an order denying rehearing has been so mailed or deliver-
8 ed, appeal to the circuit court of Kanawha County, or the
9 judge thereof in vacation, by presenting a written petition
10 to such court or judge and mailing a copy thereof to the
11 commissioner. Upon the receipt of such copy the com-
12 missioner shall forthwith transmit to the clerk of such
13 court the record of the proceedings before him. The court
14 or judge shall fix a time for hearing upon said petition at
15 his earliest convenience. Notice in writing of the time and
16 place of said hearing shall be given by petitioner to the
17 commissioner at least fifteen days prior thereto. The court
18 or judge shall, without a jury, hear and determine the
19 matter upon the record of proceedings before the com-
20 missioner, except that for good cause shown the court may
21 permit the introduction of additional evidence, and may
22 enter an order revising or reversing the order of the com-
23 missioner, or may affirm such order, or remand the action
24 to the commissioner for further proceedings. Pending
25 such appeal the order of the commissioner shall be in full
26 force and effect until final determination, unless the com-
27 missioner shall in his discretion have stayed the effect of
28 his order pending final determination of the appeal or
29 unless the court or judge thereof before whom the appeal
30 is pending shall enter an order staying the commissioner's
31 order until final determination. The judgment of the
32 circuit court may be reviewed upon appeal by the supreme
33 court of appeals in the same manner as other civil cases
34 to which the state is a party.

Sec. 15. *Annual Report by Commissioner.*—The commissioner shall annually, on or before the first day of November, submit to the governor a report for the previous calendar year of his official acts, and of the condition of insurers doing business in this state, with a condensed statement of their reports to him, abstracts of all accounts rendered to any court by receivers of insolvent insurers, abstracts of reports to the commissioner by such receivers, together with a statement of all fees and taxes received from insurers and other licensees and paid by him into the state treasury.

Article 3. Licensing, Fees and Taxation of Insurers

Section

1. License required.
2. General qualifications for license.
3. Prerequisites to issuance of charter for domestic insurer.
4. Charter documents and information to be filed.
5. Capital or surplus required.
6. Deposit requirements.
7. Issuance of license; kinds of insurance.
8. Term of license; renewal.
9. Refusal to license.
10. Mandatory revocation or suspension.
11. Discretionary revocation or suspension; penalty in lieu thereof; reissuance.
12. Name of insurer.
13. Fees; fund for maintenance of commissioner's office.
14. Premium tax.
15. Annuity tax.
16. Retaliation.

Section 1. *License Required.*—(a) No person shall act as an insurer and no insurer shall transact insurance in West Virginia except as authorized by a valid license issued by the commissioner, except as to such transactions as are expressly otherwise provided for in this chapter.

(b) No such license shall be required for an insurer, formerly holding a valid license, to enable it to investigate and settle losses under its policies lawfully written in West Virginia while such license was in effect, or to liquidate such assets and liabilities of the insurer (other than the collection of new premiums) as may have resulted from its former authorized operations in West Virginia.

(c) An insurer not transacting new insurance business in West Virginia but continuing collection of premiums on and servicing of policies remaining in force as to

16 residents of or risks located in West Virginia, is trans-
17 acting insurance in West Virginia for the purpose of
18 premium and annuity tax requirements but is not required
19 to have a license therefor.

Sec. 2. *General Qualifications for License.*—(a) To
2 qualify for a license to transact insurance in West Vir-
3 ginia an insurer must be otherwise in compliance with
4 the provisions of this chapter and with its charter, and
5 must be an incorporated stock insurer, or an incorporated
6 mutual insurer or a reciprocal insurer.

7 (b) No license to transact insurance in this state shall
8 be issued, renewed or continued in effect to any domestic,
9 foreign or alien insurer which is owned, or financially
10 controlled, in whole or in part, by any state, or by a
11 foreign government, or any political subdivision, instru-
12 mentality or agency of either, or which is an agency of
13 any such state, government or subdivision, unless such
14 insurer was so owned, controlled or constituted prior to
15 the first day of January, one thousand nine hundred fifty-
16 five and licensed to transact insurance in this state prior
17 to the first day of January, one thousand nine hundred
18 fifty-five.

Sec. 3. *Prerequisites to Issuance of Charter for Domestic*
2 *Insurer.*—The secretary of state of this state shall not
3 issue a certificate of incorporation to any insurer until the
4 commissioner shall have examined the charter of such
5 insurer and approved same in writing upon being satisfied
6 that such insurer is in a position to comply with provisions
7 of this chapter and that the incorporation and licensing of
8 such insurer is in the public interest, and unless such
9 charter shall provide that such insurer shall maintain its
10 principal place of business in this state.

Sec. 4. *Charter Documents and Information to be Filed.*
2 —Every insurer applying for an initial license shall file
3 with the commissioner accompanying its application:
4 (a) a certified copy of its charter with all amendments;
5 (b) a certified copy of its bylaws with all amendments;
6 (c) a copy of its annual statement as of December
7 thirty-first last preceding;

8 (d) a copy of report of last examination, if any, made
 9 of the insurer, certified by the insurance supervisory
 10 official of the state of domicile of a foreign insurer or
 11 the state of entry into the United States of an alien in-
 12 surer;

13 (e) if a foreign or alien insurer, a certificate of the
 14 public official having supervision of insurance in the state
 15 or country of domicile of such insurer showing that it is
 16 authorized to transact the kinds of insurance proposed to
 17 be transacted in West Virginia;

18 (f) if an alien insurer, a copy of the appointment and
 19 authority of its United States manager;

20 (g) certificate of deposit where deposits are required
 21 by this chapter;

22 (h) such other information and documents as the com-
 23 missioner deems necessary for the protection of policy-
 24 holders or to assure compliance with this chapter.

Sec. 5. *Capital or Surplus Required.*—To qualify for a
 2 license to transact insurance, unless otherwise provided
 3 in this chapter, an insurer shall possess paid-in capital
 4 stock (if a stock insurer) or surplus (if a mutual insurer)
 5 in the amount set forth below opposite the kinds of insur-
 6 ance for which license is requested:

7 (a) Life	\$200,000.00
8 (b) Accident and Sickness	\$200,000.00
9 (c) Life and Accident and Sickness	\$300,000.00
10 (d) Fire and Marine	\$100,000.00
11 (e) Casualty	\$100,000.00
12 (f) Surety	\$600,000.00
13 (g) Accident and Sickness together with any 14 one or more of the following: Fire and 15 Marine, Casualty	\$300,000.00
16 (h) Fire and Marine, and Casualty	\$200,000.00
17 (i) Surety together with any one or more of 18 the following: Accident and Sickness, 19 Fire and Marine, Casualty	\$600,000.00

20 In addition the commissioner shall require of any insurer
 21 additional expendable surplus funds in an amount equal

22 to one-half such minimum capital or surplus listed above
23 for the kinds of insurance for which license is requested:
24 *Provided*, That insurers duly licensed to transact insur-
25 ance in West Virginia on March thirtieth, one thousand
26 nine hundred fifty-seven shall have until March thirty-
27 first, one thousand nine hundred sixty-one to meet the
28 requirement of additional expendable surplus funds in
29 the amount herein specified.

Sec. 6. *Deposit Requirements.*—The commissioner shall
2 not issue a license to any insurer unless it has deposited
3 and maintained in trust with the state treasurer, for the
4 protection of its policyholders or its policyholders and
5 creditors, cash or government securities eligible for the
6 investment of capital funds of domestic insurers (of the
7 type described in section seven of article eight of this
8 chapter) under this chapter in the amount of one hundred
9 thousand dollars; except:

10 (a) as to foreign insurers in lieu of such deposit or
11 part thereof with the state treasurer, the commissioner
12 may accept the current certificate of the state insurance
13 supervisory official of any other state that a like deposit
14 by such insurer is being maintained in public custody or
15 in a depository approved by such supervisory official in
16 such state in trust for the purpose of protection of all
17 policyholders or policyholders and creditors of such in-
18 surer in the United States.

19 (b) as to alien insurers in lieu of such deposit or part
20 thereof with the state treasurer, the commissioner may
21 accept evidence satisfactory to him that the insurer main-
22 tains within the United States in public depositories, or
23 in trust institutions within the United States approved
24 by the commissioner, assets available for discharge of its
25 United States insurance obligations which assets shall
26 be in an amount not less than the outstanding liabilities
27 of the insurer arising out of its insurance transactions
28 in the United States, together with an amount equal to
29 the deposit required under this section for other insurers
30 requesting license to transact like kinds of insurance.

Sec. 7. *Issuance of License; Kinds of Insurance.*—Upon
2 receiving the application and supporting documents re-

3 quired by section four of this article, if the commissioner
4 is satisfied that an insurer has complied with the terms
5 of its charter and the provisions of this chapter and
6 other laws of this state and that such insurer is solvent
7 and will transact insurance in a legal, proper and just
8 manner, he may issue to such insurer a license authorizing
9 it to transact insurance in this state. Such license may
10 authorize an insurer which otherwise qualifies therefor
11 to transact life and/or accident and sickness insurance,
12 or an insurer other than a life insurer to transact any
13 of the kinds of insurance other than life for which it
14 otherwise qualifies. However, as to any life insurer which,
15 immediately prior to the effective date of this chapter,
16 lawfully held a license granting to it the right to trans-
17 act in West Virginia additional kinds of insurance other
18 than life and accident and sickness, the commissioner may
19 continue to license said insurer to transact the same kinds
20 of insurance as those specified in such prior license so
21 long as such insurer is otherwise in compliance with this
22 chapter.

Sec. 8. *Term of License; Renewal.*—All licenses of in-
2 surers shall expire at midnight on the March thirty-first
3 next following the date of issuance. The commissioner
4 shall renew annually the licenses of all insurers who
5 qualify and make application therefor upon a form pre-
6 scribed by the commissioner.

Sec. 9. *Refusal to License.*—The commissioner may re-
2 fuse to license an insurer when he determines that an
3 insurer has not complied with the laws of this state or
4 that it is not in the best interests of the people of this
5 state that such insurer be licensed or that such insurer
6 would transact business in this state in an improper,
7 illegal or unjust manner. In such event the commissioner
8 shall enter an order refusing such license, and the ap-
9 plicant therefor may demand a hearing in the manner
10 provided in article two of this chapter.

Sec. 10. *Mandatory Revocation or Suspension.*—The
2 commissioner after notice and hearing shall refuse to
3 renew or shall revoke or suspend the license of any in-
4 surer:

5 (a) if such action is required by any provision of this
6 chapter;

7 (b) if the insurer no longer meets the requirements for
8 the license originally granted, because of deficiency of
9 assets or otherwise.

Sec. 11. *Discretionary Revocation or Suspension; Pen-*
2 *alty in Lieu Thereof; Reissuance.*—(a) The commissioner
3 may after notice and hearing refuse to renew, or may
4 revoke or suspend the license of an insurer, in addition
5 to other grounds therefor in this chapter, if the insurer:

6 (1) violates any provision of this chapter other than
7 those as to which refusal, suspension or revocation is man-
8 datory;

9 (2) fails to comply with any lawful rule, regulation
10 or order of the commissioner;

11 (3) is transacting insurance in an illegal, improper or
12 unjust manner;

13 (4) is found by the commissioner to be in an unsound
14 condition or in such condition as to render its further
15 transaction of insurance in West Virginia hazardous to its
16 policyholders or to the people of West Virginia;

17 (5) compels insureds under its policies to accept less
18 than the amount due them or to bring suit against it to
19 secure full payment when it has no substantial defense;

20 (6) refuses to be examined or to produce its accounts,
21 records and files for examination by the commissioner
22 when required;

23 (7) fails to pay any final judgment rendered against
24 it in West Virginia within thirty days after the judgment
25 became final or time for appeal expired, whichever is
26 later;

27 (8) fails to pay when due to the state of West Virginia
28 any taxes, fees, charges or penalties required by this
29 chapter.

30 (b) In lieu of refusing to renew, revoking or suspend-
31 ing the license of an insurer in any case except where
32 such action is mandatory, the commissioner may, by
33 order, require the insurer to pay to the state of West
34 Virginia a penalty in a sum not exceeding one thousand

35 dollars, and upon the failure of the insurer to pay such
36 penalty within thirty days after notice thereof, the com-
37 missioner may revoke or suspend the license of such
38 insurer.

39 (c) When any license has been revoked or suspended
40 or renewal thereof refused, the commissioner may reissue,
41 terminate the suspension or renew such license when he
42 is satisfied that the conditions causing such revocation,
43 suspension or refusal to renew have ceased to exist and
44 are unlikely to recur.

Sec. 12. *Name of Insurer.*—No insurer shall be licensed
2 to transact insurance in West Virginia which has or uses
3 a name so similar to that of any insurer already so licensed
4 as to cause uncertainty or confusion or which tends to
5 deceive or mislead as to the type of organization of the
6 insurer; except that in case of conflict of names between
7 two insurers the commissioner may permit or require
8 the newly licensed insurer to use in West Virginia such
9 supplementation or modification of its name as is reason-
10 ably necessary to avoid such conflict.

Sec. 13. *Fees; Fund for Maintenance of Commissioner's*
2 *Office.*—(a) Except where it is otherwise specially pro-
3 vided, the commissioner shall demand and receive the
4 following fees from all insurers: For annual fee for each
5 license, fifty dollars; for receiving and filing annual re-
6 ports, fifty dollars; for valuation of policies of life in-
7 surers organized under the laws of this state, one and
8 one-half cents for each one thousand dollars of insurance;
9 for valuation of policies of life insurers organized under
10 the laws of any other state licensed to transact insurance
11 in this state such rate for each one thousand dollars of
12 insurance valued as is imposed by such other state upon
13 any similar insurer organized under the laws of this state
14 licensed to transact insurance in such other state; for
15 filing certified copy of articles of incorporation, twenty-
16 five dollars; for filing copy of its charter, twenty-five
17 dollars; for filing statements preliminary to admission,
18 fifty dollars; for filing any additional paper required by
19 law or furnishing copies thereof, one dollar; for every
20 certificate of valuation, copy of report or certificate of

21 condition of company to be filed in any other state, five
22 dollars; for each licensed agent, five dollars. The commis-
23 sioner may by regulation set reasonable charges for print-
24 ed forms for the annual statements required by law. He
25 may sell at cost publications purchased by, or printed on
26 behalf of the commissioner.

27 (b) The commissioner shall pay into the state treasury
28 all fees and charges collected by him under the provisions
29 of this section. Such fees and charges collected shall com-
30 prise a special fund designated "insurance commissioner's
31 fund" to be appropriated as provided by law for the use
32 of the commissioner in the administration of his office,
33 and any portion of such fund not used during a calendar
34 year shall be carried forward for such subsequent use.
35 The state treasurer shall, at the end of each fiscal year,
36 transfer any amount over and above the amount appro-
37 priated for the operation of the commissioner's office for
38 the ensuing year to the general fund.

Sec. 14. *Premium Tax.*—Every insurer transacting in-
2 surance in West Virginia shall make a return to the com-
3 missioner annually on a form prescribed by the commis-
4 sioner, on or before the first day of March, under the oath
5 of its president or secretary, of the gross amount of direct
6 premiums (whether designated as a premium or by some
7 other name) collected and received by it during the pre-
8 vious calendar year on policies covering risks resident,
9 located or to be performed in this state and stating the
10 amount of tax due hereunder, together with payment
11 to the commissioner in full for such tax due. Such tax
12 shall be a sum equal to two percent of such gross direct
13 premiums, including dividends (by whatever name called)
14 on participating policies applied in reduction of premiums,
15 less premiums returned to policyholders because of can-
16 cellation of policies. All such taxes received by the com-
17 missioner shall be paid by him into the state treasury
18 for the benefit of the state fund.

Sec. 15. *Annuity Tax.*—Every life insurer transacting
2 insurance in West Virginia shall make a return to the
3 commissioner annually on a form prescribed by the com-
4 missioner, on or before the first day of March, under the

5 oath of its president or secretary, of the gross amount
6 of annuity considerations collected and received by it
7 during the previous calendar year on business transacted
8 in this state and stating the amount of tax due hereunder,
9 together with payment in full for such tax due. Such tax
10 shall be a sum equal to one per centum of the gross
11 amount of such annuity considerations, less annuity con-
12 siderations returned and less termination allowances on
13 group annuity contracts. All such taxes received by the
14 commissioner shall be paid by him into the state treasury
15 for the benefit of the state fund.

Sec. 16. *Retaliation.*—(a) When by or pursuant to the
2 laws of any other state or foreign country any premium
3 or income or other taxes, or any fees, fines, penalties,
4 licenses, deposit requirements or other material obliga-
5 tions, prohibitions or restrictions are imposed upon West
6 Virginia insurers doing business, or that seek to do busi-
7 ness in such other state or country, or upon the agents
8 of such insurers, which in the aggregate are in excess of
9 such taxes, fees, fines, penalties, licenses, deposit require-
10 ments or other obligations, prohibitions or restrictions
11 directly imposed in the aggregate upon similar insurers
12 of such other state or foreign country or upon the agents
13 of such insurers under the statutes of this state, so long
14 as such laws continue in force or are so applied, the same
15 obligations, prohibitions and restrictions of whatever kind
16 shall be imposed in the same manner upon similar in-
17 surers of such other state or foreign country doing busi-
18 ness in West Virginia. Any tax, license or other obliga-
19 tion imposed by any city, county or other political sub-
20 division of a state or foreign country on West Virginia
21 insurers or their agents shall be deemed to be imposed
22 by such state or foreign country within the meaning of
23 this section. The provisions of this section shall not apply
24 to ad valorem taxes on real or personal property or to
25 personal income taxes.

26 (b) If an insurer domiciled in West Virginia is refused
27 authority to transact in another state insurance upon a
28 plan and in a manner which is permitted for domestic
29 insurers of such other state, notwithstanding that the

30 West Virginia insurer be fully qualified for such authority
31 in accordance with the applicable laws of such other state,
32 and if such refusal be not accompanied by a written state-
33 ment of the grounds therefor, then and thereafter, and
34 for so long as such refusal shall continue, the commis-
35 sioner may refuse to grant an initial license (but not a
36 renewal of an existing license) to any insurer domiciled
37 in such other state which may seek to transact in West
38 Virginia a like kind or kinds of insurance.

Article 4. General Provisions

Section

1. Compliance required.
2. Application to particular types of insurers.
3. Existing licenses.
4. Existing contracts.
5. Existing forms and filings.
6. Existing actions, violations.
7. Particular provisions prevail.
8. General penalty.
9. Repeal.
10. Severability.
11. Effective date.
12. Service of process on licensed insurers.
13. Service of process on unlicensed insurers.
14. Annual statement by insurers.
15. Reinsurance.
16. Limit of risk.
17. Prohibited interests of officers and directors in certain transactions.
18. Representation of unlicensed insurers prohibited.

Section 1. *Compliance Required.*—No person shall trans-
2 act insurance in West Virginia or relative to a subject of
3 insurance resident, located or to be performed in West
4 Virginia without complying with the applicable provi-
5 sions of this chapter.

Sec. 2. *Application to Particular Types of Insurers.*—
2 No provision of this chapter shall apply to:

3 (a) hospital service corporations and medical service
4 corporations except as stated in article twenty-four of this
5 chapter;

6 (b) fraternal benefit societies except as stated in article
7 twenty-three of this chapter;

8 (c) farmers' mutual fire insurance companies except as
9 stated in article twenty-two of this chapter.

Sec. 3. *Existing Licenses.*—The expiration dates of
2 licenses in force immediately prior to the effective date

3 of this chapter, and lawfully existing under any law re-
4 pealed by this act, are hereby extended to midnight,
5 March thirty-first next succeeding such effective date, at
6 which time they shall expire. Any such license may be
7 renewed, suspended or revoked as though originally issued
8 under this chapter.

2 Sec. 4. *Existing Contracts*.—No provision of this chapter
3 shall be deemed to modify or invalidate any insurance
4 policy heretofore lawfully in force.

2 Sec. 5. *Existing Forms and Filings*.—Every insurance
3 form and every rate or other filing lawfully in use imme-
4 diately prior to the effective date of this chapter shall
5 continue in effect until the commissioner otherwise pre-
6 scribes pursuant to this chapter.

2 Sec. 6. *Existing Actions, Violations*.—Repeal by this act
3 of any laws shall not affect or abate any right heretofore
4 accrued, action or proceeding heretofore commenced or
5 any unlawful act or violation heretofore committed under
6 such laws and punishment or deprivation of license as a
7 consequence thereof as provided by such laws. All such
8 laws shall be deemed to continue in force to the extent
9 made necessary by the foregoing provision.

2 Sec. 7. *Particular Provisions Prevail*.—Provisions of
3 this chapter relative to a particular kind of insurance
4 or a particular type of insurer or to a particular matter
5 shall prevail over provisions relating to insurance in gen-
6 eral or insurers in general or to such matter in general.

2 Sec. 8. *General Penalty*.—In addition to the refusal to
3 renew, suspension or revocation of a license, or penalty
4 in lieu of the foregoing, because of violation of any pro-
5 vision of this chapter, it is a misdemeanor for any person
6 to violate any provision of this chapter, and any person
7 convicted of a misdemeanor for the violation of any pro-
8 vision of this chapter shall be punished by a fine of not
9 more than one thousand dollars or by imprisonment for
10 not more than six months, or by both such fine and im-
11 prisonment.

2 Sec. 9. *Repeal*.—The provisions of all acts or parts of
3 acts, or of this code, which are inconsistent with the pro-

3 visions of this chapter are hereby repealed to the extent
4 of such inconsistency. Repeal by this chapter or this act
5 of any provision of any act or parts of acts or of this
6 code shall not have the effect of reviving any prior law
7 theretofore repealed or superseded by such repealed pro-
8 vision.

2 Sec. 10. *Severability.*—If any provision of this chapter
3 or the application of such provision to any circumstance
4 is held to be unconstitutional or otherwise invalid, the
5 remainder of this chapter or the application of the pro-
6 visions to other circumstances shall not be affected there-
7 by. The Legislature hereby declares that it would have
8 passed the remainder of this chapter if it had known that
9 such provision, or its application to any circumstances,
would be declared unconstitutional or otherwise invalid.

2 Sec. 11. *Effective Date.*—Except as otherwise expressly
3 stated herein, this chapter shall become effective on the
4 first day of January, one thousand nine hundred fifty-
5 eight.

2 Sec. 12. *Service of Process on Licensed Insurers.*—The
3 auditor of this state shall be, and is hereby constituted,
4 the attorney-in-fact of every licensed insurer, domestic,
5 foreign, or alien, transacting insurance in this state, upon
6 whom all legal process in any action, suit or proceeding
7 against it shall be served, and he may accept service of
8 such process. Such process shall be served upon the
9 auditor or accepted by him, in the same manner as pro-
10 vided for service of process upon unlicensed insurers under
11 subparagraphs (2) and (3) of paragraph (b) of section
12 thirteen of this article. Each licensed insurer shall pay
13 to the auditor an annual fee of ten dollars for services as
authorized agent for service of process.

2 Sec. 13. *Service of Process on Unlicensed Insurers.*—
3 (a) The purpose of this section is to subject certain
4 insurers to the jurisdiction of the courts of this state in
5 suits by or on behalf of insureds or beneficiaries under
6 certain insurance contracts. The legislature declares that
7 it is a subject of concern that many residents of this state
hold policies of insurance issued or delivered in this state

8 by insurers while not licensed to transact insurance in this
9 state, thus presenting to such residents the often insuper-
10 able obstacle of resorting to distant forums for the purpose
11 of asserting legal rights under such policies. In further-
12 ance of such state interest, the legislature herein provides
13 a method of substituted service of process upon such
14 insurers and declares that in so doing it exercises its power
15 to protect its residents and to define, for the purpose of
16 this section, what constitutes transacting insurance in this
17 state, and also exercises powers and privileges available
18 to the state by virtue of public law number fifteen, seven-
19 ty-ninth congress of the United States, chapter twenty,
20 first session, senate number three hundred forty, as amend-
21 ed, which declares that the business of insurance and
22 every person engaged therein shall be subject to the laws
23 of the several states.

24 (b) (1) Any of the following acts in this state, effected
25 by mail or otherwise, by an unlicensed foreign or alien
26 insurer: (1) the issuance or delivery of contracts of in-
27 surance to residents of this state or to corporations author-
28 ized to do business therein, (2) the solicitation of appli-
29 cations for such contracts, (3) the collection of premiums,
30 membership fees, assessments or other considerations for
31 such contracts, or (4) any other transaction of business,
32 is equivalent to and shall constitute an appointment by
33 such insurer of the auditor of the state and his successor
34 in office, to be its true and lawful attorney, upon whom
35 may be served all lawful process in any action, suit, or
36 proceeding instituted by or on behalf of an insured or
37 beneficiary arising out of any such contract of insurance,
38 and any such act shall be signification of its agreement
39 that such service of process is of the same legal force and
40 validity as personal service of process in this state upon
41 such insurer.

42 (2) Such service of process upon any such insurer in
43 any such action or proceeding in any court of competent
44 jurisdiction of this state, may be made by serving the
45 auditor of the state or his chief clerk with two copies
46 thereof and the payment to him of a fee of two dollars.
47 The auditor shall forward a copy of such process by regis-

48 tered mail to the defendant at its last known principal
49 place of business, and shall keep a record of all process so
50 served upon him. Such service of process is sufficient,
51 provided notice of such service and a copy of the process
52 are sent within ten days thereafter by or on behalf of the
53 plaintiff to the defendant at its last known principal place
54 of business by registered mail with return receipt request-
55 ed. The plaintiff shall file with the clerk of the court in
56 which the action is pending, or with the judge or justice of
57 such court, in case there be no clerk, an affidavit of com-
58 pliance herewith, a copy of the process, and either a return
59 receipt purporting to be signed by the defendant or a
60 person qualified to receive its registered mail in accord-
61 ance with the rules and customs of the post-office depart-
62 ment; or, if acceptance was refused by the defendant or
63 its agent, the original envelope bearing a notation by the
64 postal authorities that receipt was refused. Service of
65 process so made shall be deemed to have been made
66 within the territorial jurisdiction of any court in this
67 state.

68 (3) Service of process in any such action, suit or pro-
69 ceeding shall in addition to the manner provided in sub-
70 paragraph (2) of this paragraph (b) be valid if served
71 upon any person within this state who, in this state on
72 behalf of such insurer, is

73 A. Soliciting insurance, or

74 B. Making, issuing or delivering any contract of insur-
75 ance, or

76 C. Collecting or receiving any premium, membership
77 fee, assessment or other consideration for insurance; pro-
78 vided notice of such service and a copy of such process are
79 sent within ten days thereafter, by or on behalf of the
80 plaintiff to the defendant at the last known principal
81 place of business of the defendant, by registered mail with
82 return receipt requested. The plaintiff shall file with the
83 clerk of the court in which the action is pending, or with
84 the judge or justice of such court in case there be no clerk,
85 an affidavit of compliance herewith, a copy of the process,
86 and either a return receipt purporting to be signed by the
87 defendant or a person qualified to receive its registered

88 mail in accordance with the rules and customs of the post-
89 office department; or, if acceptance was refused by the
90 defendant or its agent the original envelope bearing a
91 notation by the postal authorities that receipt was refused.

92 (4) The papers referred to in subparagraphs (2) and
93 (3) of this paragraph (b) shall be filed within thirty days
94 after the return receipt or other official proof of delivery
95 or the original envelope bearing a notation of refusal, as
96 the case may be, is received by the plaintiff. Service of
97 process shall be complete ten days after such process and
98 the accompanying papers are filed in accordance with this
99 section.

100 (5) Nothing in this section contained shall limit or
101 abridge the right to serve any process, notice or demand
102 upon any insurer in any other manner now or hereafter
103 permitted by law.

104 (c) (1) Before any unlicensed foreign or alien insurer
105 shall file or cause to be filed any pleading in any action,
106 suit or proceeding instituted against it, such unlicensed
107 insurer shall either (1) deposit with the clerk of the court
108 in which such action, suit or proceeding is pending, cash
109 or securities or file with such clerk a bond with good and
110 sufficient sureties, to be approved by the court, in an
111 amount to be fixed by the court sufficient to secure the pay-
112 ment of any final judgment which may be rendered in
113 such action: *Provided, however,* That the court may in its
114 discretion make an order dispensing with such deposit or
115 bond where the auditor of the state shall have certified
116 to such court that such insurer maintains within this
117 state funds or securities in trust or otherwise sufficient
118 and available to satisfy any final judgment which may be
119 entered in such action, suit or proceeding; or (2) procure
120 a license to transact insurance in this state.

121 (2) The court in any action, suit, or proceeding, in
122 which service is made in the manner provided in sub-
123 paragraphs (2) or (3) of paragraph (b) of this section
124 may, in its discretion, order such postponement as may be
125 necessary to afford the defendant reasonable opportunity
126 to comply with the provisions of subparagraph (1) of
127 this paragraph (c) and to defend such action.

128 (3) Nothing in subparagraph (1) of this paragraph (c)
129 is to be construed to prevent an unlicensed foreign or alien
130 insurer from filing a motion to set aside service thereof
131 made in the manner provided in subparagraphs (2) or (3)
132 of paragraph (b) of this section on the grounds either (1)
133 that such unlicensed insurer has not done any of the acts
134 enumerated in subparagraph (1) of paragraph (b) of this
135 section, or (2) that the person on whom service was made
136 pursuant to subparagraph (3) of paragraph (b) of this
137 section was not doing any of the acts therein enumerated.

138 (d) In any action against an unlicensed foreign or alien
139 insurer upon a contract of insurance issued or delivered
140 in this state to a resident thereof or to a corporation
141 authorized to do business therein, if the insurer has failed
142 for thirty days after demand prior to the commencement
143 of the action to make payment in accordance with the
144 terms of the contract, and it appears to the court that such
145 refusal was vexatious and without reasonable cause, the
146 court may allow to the plaintiff a reasonable attorney's fee
147 and includes such fee in any judgment that may be rendered
148 in such action. Such fee shall not exceed twelve and
149 one-half percent of the amount which the court finds the
150 plaintiff is entitled to recover against the insurer, but in
151 no event shall such fee be less than twenty-five dollars.
152 Failure of an insurer to defend any such action shall be
153 deemed prima facie evidence that its failure to make pay-
154 ment was vexatious and without reasonable cause.

155 (e) The provisions of this section shall not apply to any
156 suit, action or proceeding against any unlicensed foreign
157 or alien insurer arising out of any contract of excess line
158 insurance effected in accordance with article twelve of
159 this chapter where any such contract contains a provision
160 designating the auditor or his successor in office its true
161 and lawful attorney upon whom may be served all lawful
162 process in any action, suit or proceeding instituted by or
163 on behalf of an insured or beneficiary arising out of such
164 contract of insurance.

Sec. 14. *Annual Statement by Insurers.*—Each licensed
2 insurer shall annually on or before March first, unless the
3 time is extended by the commissioner for good cause

4 shown, file with the commissioner a true statement of its
5 financial condition, transactions and affairs as of the
6 December thirty-first preceding; said statement to be in
7 form and content as prescribed and required by the com-
8 missioner for the kinds of insurance to be reported upon.
9 The statement of an alien insurer shall relate only to its
10 transactions and affairs in the United States unless the
11 commissioner requires otherwise.

Sec. 15. *Reinsurance.*—(a) An insurer shall reinsure its
2 risks, or any part thereof, only in solvent insurers having
3 surplus to policyholders not less in amount than the paid-in
4 capital required under this chapter of a stock insurer
5 licensed to transact like kinds of insurance.

6 (b) An insurer shall so reinsure in such alien insurers
7 only as are authorized to transact insurance in at least
8 one state of the United States or have in the United States
9 a duly authorized attorney-in-fact to accept service of
10 legal process against the insurer as to any liability which
11 might arise on account of such reinsurance.

12 (c) No credit shall be allowed, as an asset or as a de-
13 duction from liability, to any ceding insurer for reinsur-
14 ance unless the reinsurance is in insurers either licensed
15 in West Virginia to transact insurance of the kind being
16 reinsured or which have been approved by the commis-
17 sioner in writing; nor unless the reinsurance is payable
18 by the assuming insurer on the basis of the liability of
19 the ceding insurer under the contracts reinsured without
20 diminution because of the insolvency of the ceding insurer
21 nor unless under the reinsurance contract the liability for
22 such reinsurance is assumed by the assuming insurer or
23 insurers as of the same effective date.

24 (d) Any licensed insurer may accept reinsurance for
25 the same kinds of insurance and within the same limits
26 as it is authorized to transact direct insurance.

27 (e) No insurer shall reinsure all or substantially all of
28 its risks on property or lives located in West Virginia, or
29 substantially all of a major class thereof, unless the rein-
30 surance agreement be filed with and approved by the
31 commissioner.

32 (f) This section shall not apply to insurance of ocean
33 marine risks or marine protection and indemnity risks.

Sec. 16. *Limit of Risk.*—(a) No insurer shall retain any
2 risk on any one subject of insurance, whether located or
3 to be performed in West Virginia or elsewhere, in an
4 amount exceeding ten percent of its surplus to policy-
5 holders.

6 (b) A “subject of insurance” for the purpose of this
7 section, as to insurance against fire and hazards other than
8 windstorm or earthquake, includes all properties insured
9 by the same insurer which are customarily considered by
10 insurers to be subject to loss or damage from the same
11 fire or other such hazard insured against.

12 (c) Reinsurance in licensed or approved insurers as
13 authorized by section fifteen of this article shall be de-
14 ducted in determining risk retained. As to surety risk,
15 deduction shall also be made of the amount assumed by
16 any established incorporated co-surety and the value and
17 security deposited, pledged or held subject to the surety’s
18 consent and for the surety’s protection.

19 (d) “Surplus to policyholders” for the purpose of this
20 section shall be deemed to include any voluntary reserves
21 which are not required pursuant to law, and shall be
22 determined from the last sworn statement of the insurer
23 on file with the commissioner or by the last report of
24 examination by the commissioner, whichever is the more
25 recent at time of assumption of such risk.

26 (e) As to alien insurers this section shall apply only to
27 risks and surplus to policyholders of the insurer’s United
28 States branch.

29 (f) This section shall not apply to life or accident and
30 sickness insurance, title insurance, insurance of ocean
31 marine risks or marine protection and indemnity risks,
32 nor to any policy or type of coverage as to which the
33 maximum possible loss to the insurer is not reasonably
34 ascertainable on issuance of the policy.

Sec. 17. *Prohibited Interests of Officers and Directors
2 in Certain Transactions.*—(a) No director or officer of an
3 insurer shall accept, except for and on behalf of the

4 insurer, or be the beneficiary of any fee, commission,
5 brokerage, gift or other emolument or thing of value in
6 addition to his fixed salary or compensation, because of
7 any investment, loan, deposit, purchase, sale, exchange,
8 or other similar transaction made by or for the insurer,
9 or be pecuniarily interested therein in any capacity ex-
10 cept on behalf of the insurer.

11 (b) No insurer shall guarantee the financial obligation
12 of any of its officers or directors.

13 (c) This section shall not prohibit such a director or
14 officer from becoming a policyholder of the insurer and
15 enjoying thereunder the rights customarily provided
16 therein for holders of such policies, nor shall this section
17 prohibit a director of an insurer other than a life insurer
18 from receiving his share of the commission earnings of a
19 stock exchange firm of which he is a partner, or a per-
20 centage of underwriting profits under a management con-
21 tract, provided such contract is subject to review and
22 termination by the board of directors, nor shall this sec-
23 tion prohibit the payment to a director of a fee for legal
24 services actually rendered to any such insurer provided
25 such compensation is not in excess of the amounts custom-
26 arily charged for the same type of service.

Sec. 18. *Representation of Unlicensed Insurers Pro-*
2 *hibited.*—(a) No person in West Virginia shall in any
3 manner, directly or indirectly, represent or assist any
4 insurer not then duly licensed to transact insurance in
5 West Virginia, in the soliciting, procuring, placing or
6 maintenance of any insurance coverage upon or with
7 relation to any subject of insurance resident, located, or
8 to be performed in West Virginia, or inspect or examine
9 any risk or collect or receive any premium on behalf of
10 such insurer.

11 (b) Any person transacting insurance in violation of
12 this section shall be personally liable to the insured for
13 the performance of any contract between the insured and
14 the insurer resulting from such transactions.

15 (c) This section shall not apply to reinsurance procured
16 in accordance with this chapter, to excess line insurance
17 procured pursuant to the provisions of article twelve of

18 this chapter, to transactions exempt under the provisions
 19 of section one of article three of this chapter, or to pro-
 20 fessional services of an adjuster or attorney-at-law.

Article 5. Organization and Procedures of Domestic Stock and Mutual Insurers

Section

1. Scope of article.
2. Application of general laws.
3. Articles of incorporation.
4. Certificate of incorporation.
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6. Formation of mutuals, applications for insurance.
7. Same—premium deposit and policy issuance.
8. Same—assets required; temporary capital stock.
9. Mutual by-laws.
10. Mutual quorum.
11. Mutual membership.
12. Corporate rights of mutual members.
13. Contingent liability of mutual members.
14. Enforcement of contingent liability.
15. Mutual nonassessable policies.
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17. Dividends to stock holders.
18. Dividends to mutual members.
19. Illegal dividends, penalty.
20. Borrowed surplus; loans to insurers.
21. Management and exclusive agency contracts.
22. Impairment of capital or assets.
23. Mutualization of stock insurer.
24. Converting mutual insurer.
25. Mergers and consolidations of stock insurers.
26. Reinsurance by stock insurers.
27. Reinsurance by mutual insurers.
28. Mergers and consolidations of mutual insurers.
29. Mutual member's share of assets on liquidation.

Section 1. *Scope of Article.*—This article shall govern
 2 domestic mutual and stock insurers hereafter formed and
 3 shall govern existing domestic mutual and stock insurers
 4 to the extent applicable.

Sec. 2. *Application of General Laws.*—The statutes of
 2 this state relating to corporations generally, except where
 3 inconsistent with the provisions of this chapter, shall ap-
 4 ply to domestic stock and mutual insurers.

Sec. 3. *Articles of Incorporation.*—In addition to the
 2 matters and things required generally in articles of in-
 3 corporation, those of a domestic stock or mutual insurer
 4 shall state:

- 5 (a) the name of the corporation;

- 6 (b) the duration of its existence, which may be per-
7 petual;
- 8 (c) the kinds of insurance the corporation is formed
9 to transact according to the definitions thereof in this
10 chapter;
- 11 (d) if a stock insurer, its authorized capital, the classes
12 and number of shares into which divided, the par value
13 of each such share, and the respective rights of each such
14 class. Shares without par value shall not be authorized;
- 15 (e) if a mutual insurer, the maximum contingent lia-
16 bility of its members (other than as to nonassessable
17 policies) for payment of losses and expenses incurred,
18 which liability shall be as stated in the articles of in-
19 corporation but not less than one nor more than six times
20 the premium for the member's policy at the annual
21 premium rate for a term of one year;
- 22 (f) the number of directors, not less than five nor more
23 than fifteen, who shall conduct the affairs of the cor-
24 poration;
- 25 (g) the city or town in West Virginia in which is to be
26 located the principal place of business, and states and
27 countries in which business may be transacted;
- 28 (h) the limitations, if any, on the corporation's indebt-
29 edness;
- 30 (i) if a stock insurer, the extent, if any, to which its
31 stock shall be assessable;
- 32 (j) such other provisions, not inconsistent with law, as
33 are deemed appropriate.

2 *Sec. 4. Certificate of Incorporation.*—The articles of in-
3 corporation shall be filed with the secretary of state of
4 this state in the same manner as for other corporations
5 and he shall issue a certificate of incorporation subject
6 to the provisions of section three of article three of this
chapter.

2 *Sec. 5. Amendment of Articles of Incorporation.*—
3 (a) A stock insurer may amend its articles of incorpora-
4 tion in the same manner as other corporations, but no
such amendment shall reduce authorized capital below

5 the amount required by this chapter for the kinds of
6 insurance thereafter to be transacted and except that no
7 such amendment shall be filed with or accepted by the sec-
8 retary of state unless approved in writing by the com-
9 missioner.

10 (b) A mutual insurer may amend its articles of incor-
11 poration by the affirmative vote of two-thirds of its mem-
12 bers present in person or by proxy at a regular or special
13 meeting of members of which notice in writing setting
14 forth the proposed amendment was mailed to all members
15 at least thirty days in advance, except that no such amend-
16 ment shall reduce the surplus below the amount required
17 by this chapter for the kinds of insurance thereafter to be
18 transacted and except that no such amendment shall be
19 filed with or accepted by the secretary of state unless
20 approved in writing by the commissioner.

Sec. 6. *Formation of Mutuals, Applications for Insur-*

2 *ance.*—(a) Upon issuance of its certificate of incorporation
3 as provided in section four of this article, the directors
4 and officers of a domestic mutual corporation formed for
5 the purpose of becoming a mutual insurer may open books
6 for the registration of such requisite applications for in-
7 surance policies as they may accept, and may receive de-
8 posits of premiums thereon.

9 (b) All such applications shall be in writing signed by
10 the applicant, covering subjects of insurance resident,
11 located, or to be performed in West Virginia.

12 (c) All such applications shall provide that:

13 (1) Issuance of the policy is contingent upon comple-
14 tion of organization of the insurer and issuance to it of
15 a proper license;

16 (2) No insurance is provided until the license has been
17 so issued; and

18 (3) The prepaid premium or deposit, and membership
19 or policy fee, if any, shall be refunded in full to the ap-
20 plicant if the organization is not completed and license
21 issued before a specified reasonable date, which date shall
22 be not later than one year following date of issuance of
23 the certificate of incorporation.

24 (d) All qualifying premiums collected shall be in cash.

25 (e) Solicitation for such qualifying applications for in-
26 surance shall be by licensed agents of the insurer, and
27 the commissioner shall upon application therefor issue
28 temporary agent's licenses expiring on the date specified
29 pursuant to paragraph (3), above, to individuals appointed
30 by the insurer and qualified as for a resident agent's
31 license. The commissioner may suspend or revoke any
32 such license for any of the same causes and pursuant to
33 the same procedures as are applicable to suspension or
34 revocation of licenses of agents in general under article
35 twelve.

Sec. 7. Same—*Premium Deposit and Policy Issuance.*—

2 (a) All sums collected by a domestic mutual insurer as
3 premiums and fees on qualifying applications for insur-
4 ance therein shall be deposited in trust in a West Virginia
5 bank or trust company under a written trust agreement
6 consistent with this section and with paragraph (3) of
7 subsection (c) of section six of this article. The corpora-
8 tion shall file an executed copy of such trust agreement
9 with the commissioner.

10 (b) Upon issuance to the insurer of a license as an in-
11 surer for the kind of insurance for which such applica-
12 tions were solicited, all funds so held in trust shall be-
13 come the funds of the insurer, and the insurer shall forth-
14 with issue and deliver its policies for which premiums
15 had been paid and accepted. The insurance provided by
16 such policies shall be effective as of the date of the license.

Sec. 8. Same—*Assets Required; Temporary Capital*

2 *Stock.*—No such domestic mutual insurer shall be issued
3 a license until bona fide applications have been received
4 and cash premiums collected in the manner provided in
5 sections six and seven of this article in such sum, which,
6 together with any other funds that may be legally avail-
7 able, will result in the insurer having unencumbered
8 assets over and above all required reserves and other
9 liabilities of at least an amount equal to that required
10 under section five of article three of this chapter for
11 issuance of a license for the kinds of insurance proposed
12 to be transacted. Such other funds may be provided

13 by the issuance of temporary capital stock in an amount
14 which together with such premiums collected will pro-
15 vide the amount necessary under section five of article
16 three of this chapter, the proceeds of said stock to be
17 invested in the manner provided for the investment of
18 other funds of the insurer. In the event such temporary
19 capital stock shall be issued, the amount of premiums
20 required to be collected prior to licensing shall be not
21 less than ten thousand dollars. Out of the net surplus of
22 the insurer the holders of such temporary capital stock
23 may receive a dividend of not more than ten percent per
24 annum, which may be cumulative. The stock shall not be
25 a liability of the insurer, except that it shall be retired
26 as soon as the surplus of the insurer becomes sufficient to
27 pay it at its par value and leave a surplus not less than
28 the amount of the temporary capital so retired.

Sec. 9. *Mutual By-laws.*—(a) The initial board or direc-
2 tors of a domestic mutual insurer shall adopt original
3 by-laws for the government of the corporation and con-
4 duct of its business. Such by-laws shall be subject to the
5 approval of a majority of the insurer's members who are
6 present in person or by proxy at the next succeeding
7 annual meeting of members, and no by-law provision shall
8 thereafter be effective which is not so approved. By-laws
9 shall be revoked or modified only by vote of a majority
10 of the insurer's members who are present in person or by
11 proxy at a meeting of which notice was given as provided
12 in the by-laws.

13 (b) The by-laws shall provide that each member of the
14 insurer is entitled to one vote in the election of corporate
15 directors and on all matters coming before membership
16 meetings, and that such vote may be exercised in person
17 or by proxy.

18 (c) The insurer shall promptly file with the commis-
19 sioner a copy, certified by the insurer's secretary, of such
20 by-laws and of every modification thereof or of addition
21 thereto. The commissioner shall disapprove any by-law
22 provision deemed by him to be unlawful, inadequate, un-
23 fair, or detrimental to the proper interests and protection
24 of the insurer's members or any class thereof. The in-

25 surer shall not, after receiving written notice of such dis-
26 approval and during the existence thereof, effectuate any
27 by-law provision so disapproved.

Sec. 10. *Mutual Quorum*.—A domestic mutual insurer
2 may in its by-laws adopt a reasonable provision for de-
3 termining a quorum of members at any meeting thereof.
4 This section shall not affect any other provision of law
5 requiring vote of a larger percentage of members for a
6 specified purpose.

Sec. 11. *Mutual Membership*.—Each holder of one or
2 more insurance policies or contracts issued by a domestic
3 mutual insurer, other than a contract of reinsurance, is a
4 member of the insurer with all the rights and obligations
5 of such membership and each such policy or contract so
6 issued shall so specify. Any person, government or gov-
7 ernmental agency, state or political subdivision thereof,
8 public or private corporation, board, association, firm,
9 estate, trustee or fiduciary may be a member of a domestic,
10 foreign, or alien mutual insurer.

Sec. 12. *Corporate Rights of Mutual Members*.—With
2 respect to the management, records, and affairs of the
3 insurer, a member of a domestic mutual insurer shall have
4 the same character of rights and relationship as a stock-
5 holder has toward a domestic stock insurer.

Sec. 13. *Contingent Liability of Mutual Members*.—
2 (a) Each member of a domestic mutual insurer shall,
3 except as otherwise hereinafter provided with respect to
4 nonassessable policies, have a contingent liability, pro
5 rata and not one for another, for the discharge of its
6 obligations, which contingent liability shall be in such
7 maximum amount as is stated in the insurer's articles of
8 incorporation.

9 (b) Each policy issued by the insurer shall contain a
10 statement of the contingent liability, if any, of its mem-
11 bers.

12 (c) Termination of the policy of any such member shall
13 not relieve the member of contingent liability for his pro-
14 portion, if any, of the obligations of the insurer which
15 accrued while the policy was in force.

16 (d) Unrealized contingent liability of members does
17 not constitute an asset of the insurer in any determination
18 of its financial condition.

Sec. 14. *Enforcement of Contingent Liability.*—(a) If
2 at any time the assets of a domestic mutual insurer are
3 less than its liabilities and the minimum amount of sur-
4 plus required of it by this chapter for authority to transact
5 the kinds of insurance being transacted, and the deficiency
6 is not cured from other sources, its directors shall levy an
7 assessment only upon its members who at any time within
8 the twelve months immediately preceding the date notice
9 of such assessment was mailed to them held policies pro-
10 viding for contingent liability, and such members shall be
11 liable to the insurer for the amount so assessed.

12 (b) The assessment shall be for such an amount as is
13 required to cure such deficiency and to provide a reason-
14 able amount of working funds above such minimum
15 amount of surplus, but such working funds so provided
16 shall not exceed five percent of the insurer's liabilities
17 as of the date as of which the amount of such deficiency
18 was determined.

19 (c) No one policy or member as to such policy shall be
20 assessed or charged with an aggregate of contingent
21 liability as to obligations incurred by the insurer in any
22 one calendar year, in excess of the number of times the
23 premium as stated in the policy as computed solely upon
24 premium earned on such policy during that year.

25 (d) No member shall have an offset against any assess-
26 ment for which he is liable, on account of any claim for
27 unearned premium or loss payable.

28 (e) As to life insurance, any part of such an assessment
29 upon a member which remains unpaid following notice
30 of assessment, demand for payment, and lapse of a rea-
31 sonable waiting period as specified in such notice, may,
32 if approved by the commissioner as being in the best
33 interests of the insurer and its members, be secured by
34 placing a lien upon the cash surrender values and accumu-
35 lated dividends held by the insurer to the credit of such
36 member.

2 Sec. 15. *Mutual Nonassessable Policies.*—While a do-
3 mestic mutual insurer maintains the deposits and surplus
4 funds necessary for the kinds of insurance it is transact-
5 ing, and is otherwise in compliance with this chapter and
6 in a sound condition, it may extinguish the contingent
7 liability of its members as to all its policies in force and
8 may omit provisions imposing contingent liability in all
9 its policies currently issued upon receiving written ap-
10 proval by the commissioner. The commissioner shall re-
11 voke the authority of a domestic mutual insurer to issue
12 policies without contingent liability at any time the in-
13 surer's assets are less than the sum of its liabilities and
14 the surplus required for such authority, or if the insurer,
15 by resolution of its board of directors approved by a
16 majority of its members, requests that such authority be
17 revoked.

2 Sec. 16. *Participating Policies.*—(a) If so provided in
3 its articles of incorporation, a domestic stock or domestic
4 mutual insurer may issue any or all of its policies with
5 or without participation in profits, savings, or unabsorbed
6 portions of premiums, may classify policies issued on a
7 participating or nonparticipating basis, and may deter-
8 mine the right to participate and the extent of participa-
9 tion of any class or classes of policies. Any such classifi-
10 cation or determination shall be reasonable, and shall not
11 unfairly discriminate as between policyholders within the
12 same such classification. A life insurer may issue both
13 participating and nonparticipating policies only if the
14 right or absence of right to participate is reasonably re-
15 lated to the premium charged.

16 (b) No dividend, otherwise earned, shall be made con-
17 tingent upon the payment of renewal premium on any
18 policy.

2 Sec. 17. *Dividends to Stockholders.*—(a) A domestic
3 stock insurer shall not pay any cash dividend to stock-
4 holders except out of that part of its available surplus
5 funds which is derived from realized net profits on its
6 business.

7 (b) A stock dividend may be paid out of any available
8 surplus funds in excess of the aggregate amount of surplus

8 loaned to the insurer pursuant to section twenty of this
9 article.

10 (c) A dividend otherwise proper, may be payable out
11 of the insurer's earned surplus even though its total
12 surplus is then less than the aggregate of its past con-
13 tributed surplus resulting from issuance of its capital
14 stock at a price in excess of the par value thereof.

Sec. 18. *Dividends to Mutual Members.*—(a) The direc-
2 tors of a domestic mutual insurer may from time to time
3 apportion and pay or credit to its members dividends
4 only out of that part of its surplus funds which represents
5 net realized savings and net realized earnings from its
6 business.

7 (b) A dividend otherwise proper may be payable out
8 of such savings and earnings even though the insurer's
9 total surplus is then less than the aggregate of its con-
10 tributed surplus.

Sec. 19. *Illegal Dividends, Penalty.*—(a) Any director
2 of a domestic stock or mutual insurer who votes for or
3 concurs in declaration or payment of an illegal dividend
4 to stockholders or members shall upon conviction thereof
5 be guilty of a misdemeanor, and shall be jointly and
6 severally liable, together with other such directors, for
7 any loss thereby sustained by the insurer.

8 (b) The stockholders or members receiving such an
9 illegal dividend shall be liable in the amount thereof to
10 the insurer.

11 (c) The commissioner may revoke or suspend the
12 license of an insurer which has declared or paid an illegal
13 dividend.

Sec. 20. *Borrowed Surplus; Loans to Insurers.*—(a) A
2 domestic stock or mutual insurer may borrow money to
3 defray the expenses of its organization, provide it with
4 surplus funds, or for any purpose required by its business,
5 upon a written agreement that such money is required to
6 be repaid only out of the insurer's surplus in excess of that
7 stipulated in such agreement. The agreement may provide
8 for interest at the rate agreed upon but not exceeding six
9 percent per annum. Such interest shall not constitute a

10 liability of the insurer as to its funds other than such
11 excess of surplus unless so stipulated in the agreement.

12 (b) Money so borrowed, together with the interest
13 thereon if so stipulated in the agreement, shall not form
14 a part of the insurer's legal liabilities except as to its
15 surplus in excess of the amount thereof stipulated in the
16 agreement, or be the basis of any set-off; but until repaid,
17 financial statements filed or published by the insurer shall
18 show as a footnote thereto the amount thereof then un-
19 paid together with any interest thereon accrued but un-
20 paid.

21 (c) Such insurer in advance of any such loan shall file
22 with the commissioner a statement of the purposes of the
23 loan and a copy of the proposed loan agreement, which
24 shall be subject to the commissioner's approval. The loan
25 and agreement shall be deemed approved thirty days after
26 date of filing with the commissioner, unless within such
27 thirty day period the insurer is notified in writing of the
28 commissioner's disapproval and the reasons therefor. The
29 commissioner shall so disapprove any such proposed loan
30 or agreement if he finds that the loan is reasonably un-
31 necessary or excessive for the purpose intended, or that
32 the terms of the loan agreement are not fair and equitable
33 to the parties, and to other similar lenders, if any, to
34 the insurer, or is not fair to policyholders, or that the
35 information so filed by the insurer is inadequate.

36 (d) Any such loan to a mutual insurer or substantial
37 portion thereof shall be repaid by the insurer when no
38 longer reasonably necessary for the purpose originally
39 intended. No repayment of such a loan shall be made by
40 a mutual insurer unless in advance approved by the com-
41 missioner.

42 (e) This section shall not apply to loans obtained by
43 the insurer in ordinary course of business from banks
44 and other financial institutions, nor to loans secured by
45 pledge of assets.

Sec. 21. *Management and Exclusive Agency Contracts.*

2 —(a) No domestic stock or mutual insurer shall make
3 any contract whereby any person or persons is granted
4 or is to enjoy in fact the management of the insurer to

5 the substantial exclusion of its board of directors, or to
6 have the controlling or preemptive right to produce sub-
7 stantially all insurance business for the insurer, unless
8 such contract is filed with the commissioner for his ap-
9 proval. The contract shall be deemed approved thirty
10 days after filing unless disapproved by the commissioner
11 within such thirty day period, subject to such reasonable
12 extension of time as the commissioner may require by
13 notice given within such thirty days. Any disapproval
14 shall be delivered to the insurer in writing, stating the
15 grounds therefor.

16 (b) The commissioner shall disapprove any such con-
17 tract if he finds that it:

18 (1) Subjects the insurer to excessive charges; or

19 (2) Is to extend for an unreasonable length of time; or

20 (3) Does not contain fair and adequate standards of
21 performance; or

22 (4) Contains other inequitable provisions or provisions
23 which impair the proper interests of stockholders, policy-
24 holders or members of the insurer.

Sec. 22. *Impairment of Capital or Assets.*—(a) If the
2 capital stock of a domestic stock insurer becomes im-
3 paired, or the assets of a domestic mutual insurer are
4 less than its liabilities and the minimum amount of sur-
5 plus required of it by this chapter for authority to trans-
6 act the kinds of insurance being transacted, the commis-
7 sioner shall at once determine the amount of the deficiency
8 and serve notice upon the insurer to make good the de-
9 ficiency within ninety days after service of such notice.

10 (b) The deficiency may be made good in cash or in
11 assets eligible under this chapter for the investment of
12 the insurer's funds; or if a stock insurer by reduction of
13 the insurer's capital to an amount not below the minimum
14 required for the kinds of insurance thereafter to be trans-
15 acted; or if a mutual insurer, by amendment of its license
16 to cover only such kind or kinds of insurance for which
17 the insurer has on deposit sufficient surplus.

18 (c) If the deficiency is not made good and proof thereof
19 filed with the commissioner within such ninety day period,

20 the insurer shall be deemed insolvent and the commis-
21 sioner shall institute delinquency proceedings against it
22 as authorized by this chapter. If such deficiency exists
23 because of increased loss reserves required by the com-
24 missioner, or because of disallowance by the commis-
25 sioner of certain assets or reduction of the value at which
26 carried in the insurer's accounts, the commissioner may
27 in his discretion and upon application and good cause
28 shown, extend for not more than an additional one hun-
29 dred eighty days the period within which such deficiency
30 may be so made good and such proof thereof so filed.

2 Sec. 23. *Mutualization of Stock Insurer.*—(a) A domes-
3 tic stock insurer may become a domestic mutual insurer
4 pursuant to such plan and procedure as may be approved
5 in advance by the commissioner.

6 (b) The commissioner shall not approve any such plan,
7 procedure, or mutualization unless:

8 (1) It is equitable to both stockholders and policy-
9 holders;

10 (2) It is subject to approval by a vote of the holders
11 of not less than three-fourths of the insurer's capital stock
12 having voting rights and by a vote of not less than two-
13 thirds of the insurer's policyholders who vote on such
14 plan in person, by proxy or by mail, pursuant to such
15 notice and procedure as may be approved by the com-
16 missioner;

17 (3) If a life insurer, the right to vote thereon is limited
18 to those policyholders whose policies have face amounts
19 of not less than one thousand dollars and have been in
20 force for one year or more;

21 (4) Mutualization will result in retirement of shares
22 of the insurer's capital stock at a price not in excess of the
23 fair market value thereof as determined by competent
24 disinterested appraisers;

25 (5) The plan provides for definite conditions to be ful-
26 filled by a designated early date upon which such mutuali-
27 zation will be deemed effective; and

28 (6) The mutualization leaves the insurer with surplus
29 funds reasonably adequate for the security of its policy-

29 holders and to continue successfully in business in the
30 states in which it is then authorized to transact insurance,
31 and for the kinds of insurance included in its license.

32 (c) This section shall not apply to mutualization under
33 order of court pursuant to rehabilitation or reorganiza-
34 tion of an insurer under article ten of this chapter.

2 Sec. 24. *Converting Mutual Insurer.*—(a) A domestic
3 mutual insurer may become a domestic stock insurer
4 pursuant to such plan and procedure as is approved in
5 advance by the commissioner.

6 (b) The commissioner shall not approve any such plan
7 or procedure unless:

8 (1) Equitable to the insurer's members;

9 (2) Subject to approval by vote of not less than three-
10 fourths of the insurer's current members voting thereon
11 in person, by proxy, or by mail at a meeting of members
12 called for the purpose pursuant to such notice and pro-
13 cedure as may be approved by the commissioner; if a life
14 insurer, the right to vote may be limited to members
15 whose policies have face amounts of not less than one
16 thousand dollars and have been in force one year or more;

17 (3) The equity of each policyholder in the insurer is
18 determinable under a fair formula approved by the com-
19 missioner, which such equity shall be based upon not less
20 than the insurer's entire surplus (after deducting con-
21 tributed or borrowed surplus funds) plus a reasonable
22 present equity in its reserves and in all nonadmitted
23 assets;

24 (4) The policyholders entitled to participate in the pur-
25 chase of stock or distribution of assets shall include all
26 current policyholders and all existing persons who had
27 been a policyholder of the insurer within three years
28 prior to the date such plan was submitted to the com-
29 missioner;

30 (5) The plan gives to each policyholder of the insurer
31 as specified in paragraph (4), above, a preemptive right
32 to acquire his proportionate part of all of the proposed
33 capital stock of the insurer, within a designated reason-
34 able period, and to apply upon the purchase thereof the

34 amount of his equity in the insurer as determined under
35 paragraph (3), above;

36 (6) Shares are so offered to policyholders at a price
37 not greater than to be thereafter offered to others nor
38 at more than double the par value of such shares;

39 (7) The plan provides for payment to each policyholder
40 not electing to apply his equity in the insurer for or upon
41 the purchase price of stock to which preemptively en-
42 titled, of cash in the amount of not less than fifty percent
43 of the amount of his equity not so used for the purchase
44 of stock, and which cash payment together with stock so
45 purchased, if any, shall constitute full payment and dis-
46 charge of the policyholder's equity as an owner of such
47 mutual insurer; and

48 (8) The plan, when completed, would provide for the
49 converted insurer paid-in capital stock in an amount not
50 less than the minimum paid-in capital required of a do-
51 mestic stock insurer transacting like kinds of insurance,
52 together with surplus funds in amount not less than one-
53 half of such required capital.

Sec. 25. Mergers and Consolidations of Stock Insurers.—

2 (a) A domestic stock insurer of any kind may merge or
3 consolidate with another domestic or foreign stock insurer
4 by complying with the provisions of general law governing
5 the merger or consolidation of stock corporations formed
6 for profit, but subject to subsection (b), below.

7 (b) No such merger or consolidation shall be effectuated
8 unless in advance thereof the plan, agreement and other
9 supporting documents have been filed with and approved
10 in writing by the commissioner. The commissioner shall
11 give such approval within a reasonable time after such
12 filing unless he finds such plan or agreement:

13 (1) Is contrary to law; or

14 (2) Inequitable to the stockholders of any domestic
15 insurer involved; or

16 (3) Would substantially reduce the security of and
17 service to be rendered to policyholders of the domestic
18 insurer in West Virginia or elsewhere.

19 (c) If the commissioner does not approve any such plan

20 or agreement he shall so notify the insurer in writing
21 specifying his reasons therefor.

Sec. 26. *Reinsurance by Stock Insurers.*— (a) A domestic
2 stock insurer may accept reinsurance for the same kinds
3 of insurance and within the same limits as it is authorized
4 to transact direct insurance, unless such reinsurance is
5 prohibited by its articles of incorporation.

6 (b) A domestic stock insurer may reinsure all or sub-
7 stantially all its business in force, or substantially all of a
8 major class thereof, with another insurer by an agreement
9 of bulk reinsurance; but no such agreement shall become
10 effective unless filed with and approved in writing by the
11 commissioner.

12 (c) The commissioner shall approve such agreement
13 within a reasonable time after such filing unless he finds
14 that it is inequitable to the stockholders of the domestic
15 insurer or would substantially reduce the protection or
16 service to its policyholders. If the commissioner does not
17 approve the agreement he shall so notify the insurer in
18 writing specifying his reasons therefor.

Sec. 27. *Reinsurance by Mutual Insurers.*— (a) A domes-
2 tic mutual insurer may accept reinsurance for the same
3 kinds of insurance and within the same limits as it is
4 authorized to transact direct insurance unless such re-
5 insurance is prohibited by its articles of incorporation.

6 (b) A domestic mutual insurer may reinsure all or
7 substantially all its business in force, or all or substantially
8 all of a major class thereof, with another insurer, stock or
9 mutual, by an agreement of bulk reinsurance after com-
10 pliance with the following:

11 (1) In advance of such reinsurance the agreement
12 therefor shall be filed with and be subject to the approval
13 of the commissioner within a reasonable time after such
14 filing. The commissioner shall not approve the agree-
15 ment unless he finds it to be fair and equitable to each
16 domestic insurer involved, and that such reinsurance if
17 effectuated would not substantially reduce the protection
18 or service to its policyholders. If the commissioner does
19 not so approve, he shall so notify each insurer involved in
20 writing specifying his reasons therefor.

21 (2) The plan and agreement for such reinsurance must
22 be approved by vote of not less than two-thirds of each
23 domestic mutual insurer's members voting thereon at
24 meetings of members called for the purpose, pursuant to
25 such reasonable notice and procedure as the commissioner
26 may approve. If a life insurer, right to vote may be
27 limited to members whose policies have face amounts of
28 not less than one thousand dollars and have been in force
29 one year or more.

Sec. 28. *Mergers and Consolidations of Mutual Insurers.*

2 — (a) A domestic mutual insurer shall not merge or con-
3 solidate with a stock insurer.

4 (b) A domestic mutual insurer may merge or consoli-
5 date with another mutual insurer in accordance with
6 procedures prescribed by general laws applying to corp-
7 orations formed for profit, except as hereinbelow provided.

8 (c) The plan and agreement for merger or consolida-
9 tion shall be submitted to and approved by at least two-
10 thirds of the members of each mutual insurer involved
11 voting thereon at meetings called for the purpose pursuant
12 to such reasonable notice and procedure as has been ap-
13 proved by the commissioner. If a life insurer, right to
14 vote may be limited to members whose policies are in face
15 amount of not less than one thousand dollars and have
16 been in force one year or more.

17 (d) No such merger or consolidation shall be effectuated
18 unless in advance thereof the plan and agreement therefor
19 have been filed with and approved in writing by the com-
20 missioner. The commissioner shall give such approval
21 within a reasonable time after such filing unless he finds
22 such plan or agreement:

23 (1) Inequitable to the policyholders of any domestic
24 insurer involved; or

25 (2) Would substantially reduce the security of and
26 service to be rendered to policyholders of the domestic
27 insurer in West Virginia or elsewhere.

28 If the commissioner does not approve such plan or agree-
29 ment he shall so notify the insurer in writing specifying
30 his reasons therefor.

Sec. 29. *Mutual Member's Share of Assets on Liquidation.*—(a) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration, shall be distributed to existing persons who were its members at any time within thirty-six months next preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's license, whichever date is the earliest.

(b) The distributive share of each such member shall be in the proportion that the aggregate premiums earned by the insurer on the policies of the member during the combined periods of his membership, bear to the aggregate of all premiums so earned on the policies of all such members. The insurer may, and a life insurer shall, make a reasonable classification of its policies so held by such members and a formula based upon such classification for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the commissioner.

Article 6. The Insurance Policy

Section

1. Scope of article.
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3. Insurable interest in property.
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27. Life insurance proceeds exempt from creditors.
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29. Policies to cover injuries to guest passengers.
30. Construction of policies.

Section 1. *Scope of Article.*—This article shall not apply
2 to reinsurance or ocean marine and foreign trade insur-
3 ance.

Sec. 2. *Insurable Interest With Reference to Personal*
2 *Insurance.*—(a) Any individual of competent legal capa-
3 city may procure or effect an insurance contract upon his
4 own life or body for the benefit of any person. But no per-
5 son shall procure or cause to be procured any insurance
6 contract upon the life or body of another individual unless
7 the benefits under such contract are payable to the indi-
8 vidual insured or his personal representative or to a per-
9 son having, at the time when such contract was made, an
10 insurable interest in the individual insured.

11 (b) If the beneficiary, assignee, or other payee under
12 any contract made in violation of this section receives from
13 the insurer any benefits thereunder accruing upon the
14 death, disablement, or injury of the individual insured, the
15 individual insured or his executor or administrator, as the
16 case may be, may maintain an action to recover such
17 benefits from the person so receiving them.

18 (c) “Insurable interest” with reference to personal in-
19 surance includes only interests as follows:

20 (1) In the case of individuals related closely by blood
21 or by law, a substantial interest engendered by love and
22 affection.

23 (2) In the case of other persons, a lawful and substan-
24 tial economic interest in having the life, health, or bodily
25 safety of the individual insured continue, as distinguished
26 from an interest which would arise only by, or would be
27 enhanced in value by, the death, disablement or injury of
28 the individual insured.

29 (3) An individual heretofore or hereafter party to a
30 contract or option for the purchase or sale of an interest
31 in a business partnership or firm, or of shares of stock of
32 a closed corporation or of an interest in such shares, has
33 an insurable interest in the life of each individual party

34 to such contract and for the purposes of such contract only,
35 in addition to any insurable interest which may otherwise
36 exist as to the life of such individual.

Sec. 3. *Insurable Interest in Property.*—(a) No insurance contract on property or of any interest therein or arising therefrom shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured.

(b) “Insurable interest” as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.

(c) The measure of an insurable interest in property is the extent to which the insured might be damnified by loss, injury, or impairment thereof.

Sec. 4. *Power to Contract for Insurance; Power of Minor.*—(a) Any person of competent legal capacity may contract for insurance.

(b) A minor not less than fifteen years of age as at nearest birthday, may, notwithstanding such minority, contract for life or accident and sickness insurance on his own life or body, for his own benefit or for the benefit of his father or mother, spouse, child, brother, sister or grandparents. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under any contract of life or accident and sickness on his own life or body, as though of full legal age, and may surrender his interest therein and give a valid discharge for any benefit accruing or money payable thereunder. The minor shall not, by reason of his minority, be entitled to rescind, avoid or repudiate the contract, nor to rescind, avoid or repudiate any exercise of a right or privilege thereunder, except that such minor, not otherwise emancipated, shall not be bound by any unperformed agreement to pay, by promissory note or otherwise, any premium on any such insurance contract.

Sec. 5. *Application or Consent Required.*—No life or accident and sickness insurance contract upon an individ-

3 ual, except a contract of group life insurance or of group
4 accident and sickness insurance, shall be made unless at
5 the time of the making of the contract the individual in-
6 sured, being of competent legal capacity to contract, ap-
7 plies therefor or consents thereto, except in the following
8 cases:

9 (a) A spouse may procure such insurance upon the
10 other spouse.

11 (b) Any person having an insurable interest in the life
12 of a minor, or any person upon whom a minor is dependent
13 for support and maintenance, may procure insurance upon
14 the life of or pertaining to such minor.

Sec. 6. *Application as Evidence.*—(a) No application
2 for the issuance of any life or accident and sickness insur-
3 ance policy or contract shall be admissible in evidence in
4 any action relative to such policy or contract, unless a true
5 copy of the application was attached to or otherwise made
6 a part of the policy when issued. This paragraph shall not
7 apply to industrial life insurance policies.

8 (b) If any policy of life or accident and sickness insur-
9 ance delivered in this state is reinstated or renewed, and
10 the insured or the beneficiary or assignee of the policy
11 makes written request, together with in the case of a
12 beneficiary evidence of the beneficiary's vested interest
13 in the policy, to the insurer for a copy of the application,
14 if any, for such reinstatement or renewal, the insurer
15 shall, within thirty days after receipt of such request at
16 its home office or at any of its branch offices, deliver or
17 mail to the person making such request a copy of such
18 application. If such copy is not so delivered or mailed
19 after having been so requested, the insurer shall be pre-
20 cluded from introducing the application in evidence in any
21 action or proceeding based upon or involving the policy
22 or its reinstatement or renewal.

23 (c) As to kinds of insurance other than life and accident
24 and sickness insurance, no application for insurance signed
25 by or on behalf of the insured shall be admissible in evi-
26 dence in any action between the insured and the insurer
27 arising out of the policy so applied for, if the insurer has
28 failed, at expiration of thirty days after receipt by the

29 insurer of written demand therefor by or on behalf of the
30 insured, to furnish to the insured a copy of such applica-
31 tion reproduced by any legible means.

Sec. 7. *Representations in Applications.*—All statements
2 and descriptions in any application for an insurance policy
3 or in negotiations therefor, by or in behalf of the insured,
4 shall be deemed to be representations and not warranties.
5 Misrepresentations, omissions, concealments of facts, and
6 incorrect statements shall not prevent a recovery under
7 the policy unless:

8 (a) Fraudulent; or

9 (b) Material either to the acceptance of the risk, or to
10 the hazard assumed by the insurer; or

11 (c) The insurer in good faith would either not have
12 issued the policy, or would not have issued a policy in as
13 large an amount, or would not have provided coverage
14 with respect to the hazard resulting in the loss, if the true
15 facts had been made known to the insurer as required
16 either by the application for the policy or otherwise.

Sec. 8. *Approval of Forms.*—(a) Except as provided in
2 section eight of article seventeen of this chapter (fire and
3 marine forms), no insurance policy form, no group certifi-
4 cate form, no insurance application form where written
5 application is required and is to be made a part of the
6 policy, and no rider, endorsement or other form to be
7 attached to any policy, shall be delivered or issued for
8 delivery in this state by an insurer unless it has been filed
9 with and approved by the commissioner, except that as
10 to group insurance policies delivered outside this state,
11 only the group certificates to be delivered or issued for
12 delivery in this state shall be filed with the commissioner
13 upon his request. This section shall not apply to policies,
14 riders, endorsements, or forms of unique character design-
15 ed for and used with relation to insurance upon a particu-
16 lar subject, or which relate to the manner of distribution
17 of benefits or to the reservation of rights and benefits
18 under life or accident and sickness insurance policies, and
19 are used at the request of the individual policyholder,
20 contract holder, or certificate holder, nor to surety bond
21 forms.

22 (b) Every such filing shall be made not less than thirty
23 days in advance of any such delivery. At the expiration of
24 such thirty days the form so filed shall be deemed approved
25 unless prior thereto it has been affirmatively approved or
26 disapproved by the commissioner. Approval of any such
27 form by the commissioner shall constitute a waiver of any
28 unexpired portion of such waiting period. The commis-
29 sioner may extend by not more than an additional thirty
30 days the period within which he may so affirmatively
31 approve or disapprove any such form, by giving notice of
32 such extension before expiration of the initial thirty day
33 period. At the expiration of any such period as so ex-
34 tended, and in the absence of such prior affirmative
35 approval or disapproval, any such form shall be deemed
36 approved. The commissioner may at any time, after notice
37 and for cause shown, withdraw any such approval.

38 (c) Any order of the commissioner disapproving any
39 such form or withdrawing a previous approval shall state
40 the grounds therefor.

41 (d) The commissioner may, by order, exempt from the
42 requirements of this section for so long as he deems proper
43 any insurance document or form or type thereof as speci-
44 fied in such order, to which, in his opinion, this section
45 may not practicably be applied, or the filing and approval
46 of which are, in his opinion, not desirable or necessary for
47 the protection of the public.

48 (e) This section shall apply also to any form used by
49 domestic insurers for delivery in a jurisdiction outside
50 West Virginia, if the insurance supervisory official of such
51 jurisdiction informs the commissioner that such form is
52 not subject to approval or disapproval by such official, and
53 upon the commissioner's order requiring the form to be
54 submitted to him for the purpose. The applicable same
55 standards shall apply to such forms as apply to forms for
56 domestic use.

2 *Sec. 9. Grounds for Disapproval.*—The commissioner
3 shall disapprove any such form of policy, application,
4 rider, or endorsement or withdraw any previous approval
5 thereof:

- 5 (a) If it is in any respect in violation of or does not
6 comply with this chapter.
- 7 (b) If it contains or incorporates by reference any in-
8 consistent, ambiguous, or misleading clauses, or excep-
9 tions and conditions which deceptively affect the risk pur-
10 ported to be assumed in the general coverage of the con-
11 tract.
- 12 (c) If it has any title, heading, or other indication of its
13 provisions which is misleading.
- 14 (d) If the purchase of such policy is being solicited by
15 deceptive advertising.
- 16 (e) If the benefits provided therein are unreasonable
17 in relation to the premium charged.
- 18 (f) If the coverages provided therein are not sufficiently
19 broad to be in the public interest.

Sec. 10. *Standard Provisions.*—(a) Insurance contracts
2 shall contain such standard provisions as are required by
3 the applicable provisions of this chapter pertaining to con-
4 tracts of particular kinds of insurance. The commissioner
5 may waive the required use of a particular standard pro-
6 vision in a particular insurance policy form, if he finds
7 such provision unnecessary for the protection of the
8 insured and inconsistent with the purposes of the policy,
9 and the policy is otherwise approved by him.

10 (b) No policy shall contain any provision inconsistent
11 with or contradictory to any standard provision used or
12 required to be used, but the commissioner may approve
13 any substitute provision which is, in his opinion, not less
14 favorable in any particular to the insured or beneficiary
15 than the standard provisions or optional standard pro-
16 visions, otherwise required. This section shall not apply
17 to the standard fire insurance policy.

Sec. 11. *General Policy Contents.*—Every policy, except
2 surety and group policies, shall specify the names of the
3 parties to the contract, the insurer's name, the subject of
4 the insurance, the risks insured against, the time the insur-
5 ance coverage becomes effective and the term during
6 which such coverage continues, the premium (or if the
7 exact amount of premium is determinable only at stated

8 intervals or termination, a statement of the basis and rates
9 upon which the premium is to be determined), and the
10 conditions pertaining to the insurance.

Sec. 12. *Additional Contents.*—A policy may contain
2 additional provisions not inconsistent with this chapter
3 and which are:

4 (a) Required to be inserted by the laws of the insurer's
5 domicile;

6 (b) Necessary, because of the manner in which the
7 insurer is constituted or operated, in order to state the
8 rights and obligations of the parties; or

9 (c) Desired by the insurer and not prohibited by law
10 nor in conflict with any provisions required to be included
11 therein and which are considered reasonable and just.

Sec. 13. *Charter or By-law Provisions.*—No policy shall
2 contain any provision purporting to make any portion of
3 the charter, by-laws or other constituent document of the
4 insurer a part of the contract unless such portion is set
5 forth in full in the policy. Any policy provision in viola-
6 tion of this section shall be invalid. This section shall not
7 apply to the subscriber's agreement or power of attorney
8 of a reciprocal insurer.

Sec. 14. *Policy Restrictions Voided.*—No policy delivered
2 or issued for delivery in West Virginia and covering a
3 subject of insurance resident, located, or to be performed
4 in West Virginia, shall contain any condition, stipulation
5 or agreement requiring such policy to be construed ac-
6 cording to the laws of any other state or country, except
7 as necessary to meet the requirements of the motor vehicle
8 financial responsibility laws or compulsory disability bene-
9 fit laws of such other state or country, or preventing the
10 bringing of an action against any such insurer for more
11 than six months after the cause of action accrues, or limit-
12 ing the time within which an action may be brought to a
13 period of less than two years from the time the cause of
14 action accrues in connection with all insurances other than
15 marine insurances; in marine policies such time shall not
16 be limited to less than one year from the date of occur-
17 rence of the event resulting in the loss. Any such condi-

18 tion, stipulation or agreement shall be void, but such
19 avoidance shall not affect the validity of the other pro-
20 visions of the policy. This section shall not apply to the
21 standard fire insurance policy.

Sec. 15. *Execution of Policies.*—Every insurance policy
2 shall be executed in the name of and on behalf of the
3 insurer by its officer, attorney-in-fact, employee, or repre-
4 sentative duly authorized by the insurer. A facsimile
5 signature of any such executing individual may be used
6 in lieu of an original signature, except that in all policies
7 other than those approved for machine vending the
8 countersignature shall be in original handwriting. No
9 insurance contract heretofore or hereafter issued and
10 which is otherwise valid shall be rendered invalid by
11 reason of the apparent execution thereof on behalf of the
12 insurer by the imprinted facsimile signature of an indi-
13 vidual not authorized so to execute as of the date of the
14 policy.

Sec. 16. *Underwriters' and Combination Policies.*—(a)
2 Two or more licensed insurers may jointly issue, and shall
3 be jointly and severally liable on, an underwriters' policy
4 bearing their names. Any one insurer may issue policies
5 in the name of an underwriter's department and such
6 policy shall plainly show the true name of the insurer.

7 (b) Two or more insurers may, with the approval of the
8 commissioner, issue a combination policy which shall con-
9 tain provisions substantially as follows:

10 (1) That the insurers executing the policy shall be
11 severally liable for the full amount of any loss or damage,
12 according to the terms of the policy, or for specified per-
13 centages or amounts thereof, aggregating the full amount
14 of insurance under the policy, and

15 (2) That service of process, or of any notice or proof of
16 loss required by such policy, upon any of the insurers
17 executing the policy, shall constitute service upon all
18 such insurers.

19 (c) This section shall not apply to co-surety obligations.

Sec. 17. *Validity of Noncomplying Forms.*—Any insur-
2 ance policy, rider, or endorsement hereafter issued and

3 otherwise valid which contains any condition or provision
4 not in compliance with the requirements of this chapter,
5 shall not be thereby rendered invalid but shall be con-
6 strued and applied in accordance with such conditions
7 and provisions as would have applied had such policy,
8 rider, or endorsement been in full compliance with this
9 chapter.

Sec. 18. *Binders.*—(a) Binders or other contracts for
2 temporary insurance may be made orally or in writing,
3 and shall be deemed to include all the usual terms of the
4 policy as to which the binder was given together with
5 such applicable endorsements as are designated in the
6 binder, except as superseded by the clear and express
7 terms of the binder.

8 (b) No binder shall be valid beyond the issuance of the
9 policy with respect to which it was given, and no agent
10 or insurer shall issue a binder covering a period in excess
11 of ninety days from its effective date.

12 (c) If the policy has not been issued a binder may be
13 extended or renewed beyond such ninety days with the
14 written approval of the commissioner, or in accordance
15 with such rules and regulations relative thereto as the
16 commissioner may promulgate.

17 (d) This section shall not apply to conditional receipts
18 issued by life and accident and sickness insurers, nor to
19 policies of group insurance.

Sec. 19. *Renewal by Certificate.*—Any insurance policy
2 terminating by its terms at a specified expiration date and
3 not otherwise renewable, may be renewed or extended at
4 the option of the insurer and upon a currently authorized
5 policy form and at the premium rate then required there-
6 for for a specific additional period or periods by certificate
7 or by endorsement of the policy, and without requiring
8 the issuance of a new policy when such certificate and its
9 use for such purpose have been approved by the commis-
10 sioner.

Sec. 20. *Assignment of Policies.*—Whenever the insured
2 in a policy owned by him has reserved to himself the right
3 to change the beneficiary thereunder, the insured shall

4 have the right to and may assign said policy to the extent
5 permitted by the terms thereof as collateral security for
6 a loan or loans, or for any other purpose without any
7 beneficiary thereunder joining therein or assenting there-
8 to, and such assignment shall subordinate the rights and
9 interests of any beneficiary in the proceeds of the policy
10 to the rights and interests of the assignee as created and
11 defined by such assignment.

Sec. 21. *Annulment of Liability Policies.*—No insurance
2 policy insuring against loss or damage through legal
3 liability for the bodily injury or death by accident of any
4 individual, or for damage to the property of any person,
5 shall be retroactively annulled by any agreement between
6 the insurer and the insured after the occurrence of any
7 such injury, death, or damage for which the insured may
8 be liable, and any such attempted annulment shall be void.

Sec. 22. *Payment Discharges Insurer.*—Whenever the
2 proceeds of or payments under a life or accident and sick-
3 ness policy or annuity contract heretofore or hereafter
4 issued become payable in accordance with the terms of
5 such policy or contract, or the exercise of any right or
6 privilege thereunder, and the insurer makes payment
7 thereof in accordance with the terms of the policy or con-
8 tract or in accordance with any written assignment there-
9 of, the person then designated in the policy or contract or
10 by such assignment as being entitled thereto shall be
11 entitled to receive such proceeds or payments and to give
12 full release therefor, and such payments shall fully dis-
13 charge the insurer from all claims under the policy or
14 contract unless, before payment is made, the insurer has
15 received at its home office written notice by or on behalf
16 of some other person that such other person claims to be
17 entitled to such payment or some interest in the policy or
18 contract.

Sec. 23. *Release by Minor.*—Any minor domiciled in this
2 state who has attained the age of eighteen years shall be
3 deemed competent to receive and to give full acquittance
4 and discharge for a payment or payments in aggregate
5 amount not exceeding two thousand dollars in any one

6 year made by a life insurer as benefits payable to such
7 minor in compliance with the provisions of an insurance
8 policy, annuity contract or settlement agreement. No such
9 minor shall be deemed competent to alienate the right to
10 or to anticipate such payments. This section shall not be
11 deemed to restrict the rights of minors set forth in para-
12 graph (b) of section four of this article.

2 **Sec. 24. *Simultaneous Deaths.***—Where the individual
3 insured or the annuitant and the beneficiary designated
4 in a life policy or policy insuring against accidental death
5 or in an annuity contract have died and there is not suffi-
6 cient evidence that they have died otherwise than simul-
7 taneously, the proceeds of the policy or contract shall be
8 distributed as if the insured or annuitant had survived
9 the beneficiary, unless otherwise specifically provided in
the policy or contract.

2 **Sec. 25. *Proof of Loss Forms.***—An insurer shall furnish,
3 upon written request of any person claiming to have a
4 loss under an insurance contract issued by such insurer,
5 forms of proof of loss for completion by such person.

2 **Sec. 26. *Defenses Not Waived.***—Without limitation of
3 any right or defense of an insurer otherwise, none of the
4 following acts by or on behalf of an insurer shall be
5 deemed to constitute a waiver of any provision of a policy
6 or of any defense of the insurer thereunder:

6 (a) Acknowledgment of the receipt of notice of loss or
7 claim under the policy.

8 (b) Furnishing forms for reporting a loss or claim, for
9 giving information relative thereto, or for making proof
10 of loss, or receiving or acknowledging receipt of any such
11 forms or proofs completed or uncompleted.

12 (c) Investigating any loss or claim under any policy
13 or engaging in negotiations looking toward a possible set-
14 tlement of any such loss or claim.

2 **Sec. 27. *Life Insurance Proceeds Exempt From Credi-***
3 ***tors.***—(a) If a policy of insurance, whether heretofore
4 or hereafter issued, is effected by any person on his own
5 life or on another life, in favor of a person other than
himself, or, except in cases of transfer with intent to

6 defraud creditors, if a policy of life insurance is assigned
7 or in any way made payable to any such person, the
8 lawful beneficiary or assignee thereof, other than the
9 insured or the person so effecting such insurance or exec-
10 utors or administrators of such insured or the person so
11 effecting such insurance, shall be entitled to its proceeds
12 and avails against the creditors and representatives of
13 the insured and of the person effecting the same, whether
14 or not the right to change the beneficiary is reserved or
15 permitted, and whether or not the policy is made payable
16 to the person whose life is insured if the beneficiary or
17 assignee shall predecease such person.

18 (b) Subject to the statute of limitations, the amount
19 of any premiums for such insurance paid in fraud of
20 creditors, with interest thereon, shall inure to their benefit
21 from the proceeds of the policy, but the insurer issuing
22 the policy shall be discharged of all liability thereon by
23 payment of the proceeds in accordance with its terms,
24 unless before such payment the insurer received written
25 notice by or in behalf of some creditor, with specification
26 of the amount claimed, claiming to recover for certain
27 premiums paid in fraud of creditors.

28 (c) For the purposes of paragraph (a), above, a policy
29 shall also be deemed to be payable to a person other than
30 the insured if and to the extent that a facility-of-payment
31 clause or similar clause in the policy permits the insurer
32 to discharge its obligations after the death of the indi-
33 vidual insured by paying the death benefits to a person as
34 permitted by such clause.

Sec. 28. *Group Life Insurance Proceeds Exempt From*
2 *Creditors.*—(a) A policy of group life insurance or the
3 proceeds thereof payable to the individual insured or to
4 the beneficiary thereunder, shall not be liable, either be-
5 fore or after payment, to be applied by any legal or equi-
6 table process to pay any liability of any person having a
7 right under the policy.

8 (b) This section shall not apply to group life insurance
9 issued to a creditor covering his debtors, to the extent
10 that such proceeds are applied to payment of the obliga-
11 tion for the purpose for which the insurance was so issued.

Sec. 29. *Policies to Cover Injuries to Guest Passengers.*

2 —No insurer shall issue any policy of bodily injury or
3 property damage liability insurance which excludes cov-
4 erage to the owner or operator of a motor vehicle on
5 account of bodily injury or property damage to any guest
6 or invitee who is a passenger in such motor vehicle.

Sec. 30. *Construction of Policies.*—Every insurance con-

2 tract shall be construed according to the entirety of its
3 terms and conditions as set forth in the policy and as
4 amplified, extended, or modified by any rider, endorse-
5 ment, or application attached to and made a part of the
6 policy.

Article 7. Assets and Liabilities

Section

1. Assets defined.
2. Deductions from assets and liabilities.
3. Assets not allowed.
4. Reporting assets not allowed.
5. Liabilities.
6. Unearned premium reserve.
7. Reserves for accident and sickness insurance.
8. Increased reserves.
9. Standard valuation law for life policies.
10. Valuation of bonds.
11. Valuation of other securities.
12. Valuation of real property.
13. Valuation of mortgages.

Section 1. *Assets Defined.*—In any determination of the
2 financial condition of an insurer, there shall be allowed
3 as assets only such assets as are owned by the insurer and
4 which consist of:

5 (a) Cash in the possession of the insurer, or in transit
6 under its control, and including the true balance of any
7 deposit in a solvent bank or trust company.

8 (b) Investments, securities, properties and loans ac-
9 quired or held in accordance with this chapter, and in
10 connection therewith the following items:

11 (1) Interest due or accrued on any bond or evidence
12 of indebtedness which is not in default and which is not
13 valued on a basis including accrued interest.

14 (2) Declared and unpaid dividends on stock and shares,
15 unless such amount has otherwise been allowed as an
16 asset.

17 (3) Interest due or accrued upon a collateral loan in
18 an amount not to exceed one year's interest thereon.

19 (4) Interest due or accrued on deposits in solvent banks
20 and trust companies, and interest due or accrued on other
21 assets, if such interest is in the judgment of the commis-
22 sioner a collectible asset.

23 (5) Interest due or accrued on a mortgage loan, in an
24 amount not exceeding in any event the amount, if any,
25 of the excess of the value of the property less delinquent
26 taxes thereon over the unpaid principal; but in no event
27 shall interest accrued for a period in excess of eighteen
28 months be allowed as an asset.

29 (6) Rent due or accrued on real property if such rent
30 is not in arrears for more than three months, and rent
31 more than three months in arrears if the payment of such
32 rent be adequately secured by property held in the name
33 of the tenant and conveyed to the insurer as collateral.

34 (7) The unaccrued portion of taxes paid prior to the
35 due date on real property.

36 (c) Premium notes, policy loans, and other policy assets
37 and liens on policies and certificates of life insurance
38 and annuity contracts and interest due and accrued there-
39 on, in an amount not exceeding the legal reserve and
40 other policy liabilities carried on each individual policy.

41 (d) The net amount of uncollected and deferred
42 premiums and annuity considerations in the case of a life
43 insurer.

44 (e) Premiums in the course of collection, other than
45 for life insurance, not more than three months past due,
46 less commissions payable thereon. The foregoing limita-
47 tion shall not apply to premiums payable directly or
48 indirectly by the United States government or by any of
49 its instrumentalities.

50 (f) Instalment premiums other than life insurance
51 premiums, in accordance with regulations prescribed by
52 the commissioner.

53 (g) Notes and like written obligations not past due,
54 taken for premiums other than life insurance premiums,
55 on policies permitted to be issued on such basis, to the

56 extent of the unearned premium reserves carried thereon.

57 (h) The full amount of reinsurance recoverable by a
58 ceding insurer from a solvent reinsurer and which rein-
59 surance is authorized under this chapter.

60 (i) Amounts receivable by an assuming insurer repre-
61 senting funds withheld by a solvent ceding insurer under
62 a reinsurance treaty.

63 (j) Deposits or equities recoverable from underwriting
64 associations, syndicates and reinsurance funds, or from
65 any suspended banking institution, to the extent deemed
66 by the commissioner available for the payment of losses
67 and claims and at values to be determined by him.

68 (k) All assets, whether or not consistent with the pro-
69 visions of this section, as may be allowed pursuant to
70 the annual statement form approved by the commissioner
71 for the kinds of insurance to be reported upon therein.

72 (l) Other assets, not inconsistent with the provisions
73 of this section, deemed by the commissioner to be avail-
74 able for the payment of losses and claims, at values to be
75 determined by him.

Sec. 2. *Deductions From Assets and Liabilities.*—Assets
2 may be allowed as deductions from corresponding liabili-
3 ties, and liabilities may be charged as deductions from
4 assets, and deductions from assets may be charged as
5 liabilities, in accordance with the form of annual state-
6 ment applicable to such insurer as prescribed by the com-
7 missioner, or otherwise in his discretion.

Sec. 3. *Assets Not Allowed.*—In addition to assets im-
2 plicitly excluded by the provisions of section one of this
3 article, the following expressly shall not be allowed as
4 assets in any determination of the financial condition of
5 an insurer;

6 (a) Good will, trade names and other like intangible
7 assets.

8 (b) Advances to officers (other than policy loans)
9 whether secured or not, and advances to employees,
10 agents, and other persons on personal security only.

11 (c) Stock of such insurer, owned by it, or any equity
12 therein or loans secured thereby, or any proportionate

13 interest in such stock acquired or held through the own-
14 ership by such insurer of an interest in another firm,
15 corporation or business unit.

16 (d) Furniture, fixtures, furnishings, safes, vehicles,
17 libraries, stationery, literature and supplies, and except,
18 in the case of any insurer, such personal property as the
19 insurer is permitted to hold pursuant to article eight of
20 this chapter, or which is acquired through foreclosure of
21 chattel mortgages acquired pursuant to article eight of
22 this chapter, or which is reasonably necessary for the
23 maintenance and operation of real estate lawfully ac-
24 quired and held by the insurer other than real estate used
25 by it for home office, branch office and similar purposes.

26 (e) The amount, if any, by which the aggregate book
27 value of investments as carried in the ledger assets of
28 the insurer exceeds the aggregate value thereof as de-
29 termined under this chapter.

Sec. 4. *Reporting Assets Not Allowed.*—All assets not
2 allowed and all other assets of doubtful value or character
3 included as assets in any statement by an insurer to the
4 commissioner, or in any examiner's report to him, shall
5 also be reported, to the extent of the value disallowed,
6 as deductions from the gross assets of such insurer except
7 where the commissioner permits a reserve to be carried
8 among the liabilities of such insurer in lieu of any such
9 deduction.

Sec. 5. *Liabilities.*—In any determination of the finan-
2 cial condition of an insurer, capital stock and liabilities
3 to be charged against its assets shall include:

4 (a) The amount of its capital stock outstanding, if any;

5 (b) The amount, estimated consistent with the pro-
6 visions of this chapter, necessary to pay all of its unpaid
7 losses and claims incurred on or prior to the date of
8 statement, whether reported or unreported, together with
9 the expenses of adjustment or settlement thereof;

10 (c) With reference to life and accident and sickness
11 insurance and annuity contracts:

12 (1) The amount of reserves on life insurance policies
13 and annuity contracts in force, valued according to the

14 tables of mortality, rates of interest, and methods adopted
15 pursuant to this chapter which are applicable thereto,

16 (2) Reserves for disability benefits, for both active and
17 disabled lives,

18 (3) Reserves for accidental death benefits, and

19 (4) Any additional reserves which may be reasonably
20 required by the commissioner on account of such insur-
21 ance.

22 (d) With reference to insurance other than specified
23 in paragraph (c) of this section, the amount of reserves
24 equal to the unearned portions of the gross premiums
25 charged on policies in force, computed in accordance with
26 this article.

27 (e) Taxes, expenses and other obligations due or ac-
28 crued at the date of the statement.

Sec. 6. *Unearned Premium Reserve.*—(a) With refer-
2 ence to insurance against loss or damage to property
3 (except as provided in paragraph (e) of this section)
4 and with reference to all general casualty insurance, and
5 surety insurance, every insurer shall maintain an un-
6 earned premium reserve on all policies in force.

7 (b) The commissioner may require that such reserves
8 shall be equal to the unearned portions of the gross
9 premiums in force after deducting reinsurance in solvent
10 insurers effected in the manner provided in this chapter
11 as computed on each respective risk from the policy's
12 date of issue.

13 (c) All of such reserves may be computed, at the option
14 of the insurer, on a yearly or more frequent pro rata
15 basis.

16 (d) After adopting a method for computing such re-
17 serve, an insurer shall not change methods without ap-
18 proval of the commissioner.

19 (e) With reference to marine insurance, premiums on
20 trip risks not terminated shall be deemed unearned, and
21 the commissioner may require the insurer to carry a re-
22 serve thereon equal to one hundred percent on trip risks
23 written during the month ended as of the date of state-
24 ment.

Sec. 7. *Reserves for Accident and Sickness Insurance.*—

2 For all accident and sickness policies the insurer shall
3 maintain an active life reserve which shall place a sound
4 value on its liabilities under such policies and which shall
5 not be less than the reserve according to standards set
6 forth in regulations issued by the commissioner and, in
7 no event, less than the pro rata gross unearned premium
8 reserve for such policies.

Sec. 8. *Increased Reserves.*—(a) If the commissioner
2 determines that an insurer's unearned premium reserve,
3 however computed, is inadequate, he may require the
4 insurer to compute such reserve or any part thereof ac-
5 cording to such other method or methods as are pre-
6 scribed in this article.

7 (b) If the loss experience of an insurer shows that its
8 loss reserves, however estimated, are inadequate, the
9 commissioner shall require the insurer to maintain loss
10 reserves in such increased amount as is needed to make
11 them adequate.

Sec. 9. *Standard Valuation Law for Life Policies.*—

2 (1) The commissioner shall annually value, or cause to
3 be valued, the reserve liabilities (hereinafter called re-
4 serves) for all outstanding life insurance policies and an-
5 nuity and pure endowment contracts of every life insurer
6 transacting insurance in this state, except that in the case
7 of an alien insurer such valuation shall be limited to its
8 United States business, and may certify the amount of any
9 such reserves, specifying the mortality table or tables,
10 rate or rates of interest and methods (net level premium
11 method or other) used in the calculation of such reserves.

12 All valuations made by him or by his authority shall
13 be made upon the net premium basis.

14 In every case the standard of valuation employed shall
15 be stated in his annual report.

16 In calculating such reserves, he may use group methods
17 and approximate averages for fractions of a year or other-
18 wise. In lieu of the valuation of the reserves herein re-
19 quired of any foreign or alien insurer, he may accept any
20 valuation made, or caused to be made, by the insurance

21 supervisory official of any state or other jurisdiction when
22 such valuation complies with the minimum standard
23 herein provided and if the official of such state or juris-
24 diction accepts as sufficient and valid for all legal pur-
25 poses the certificate of valuation of the commissioner
26 when such certificate states the valuation to have been
27 made in a specified manner according to which the aggre-
28 gate reserves would be at least as large as if they had
29 been computed in the manner prescribed by the law of
30 that state or jurisdiction.

31 Any such insurer which at any time shall have adopted
32 any standard of valuation producing greater aggregate
33 reserves than those calculated according to the minimum
34 standard herein provided may, with the approval of the
35 commissioner, adopt any lower standard of valuation, but
36 not lower than the minimum herein provided.

37 (2) This subsection shall apply to only those policies
38 and contracts issued prior to the original operative date
39 of the Standard Nonforfeiture Law (now section thirty
40 of article thirteen of this chapter). All valuations shall
41 be according to the standard of valuations adopted by the
42 insurer for the obligations to be valued. Any insurer
43 may adopt different standards for obligations of different
44 dates or classes, but if the total value determined by any
45 such standard for the obligations for which it has been
46 adopted shall be less than that determined by the legal
47 minimum standard hereinafter prescribed, or if the in-
48 surer adopts no standard, said legal minimum standard
49 shall be used.

50 The legal minimum standard for contracts issued before
51 the first day of January, in the year one thousand nine
52 hundred one, shall be actuaries' or combined experience
53 table of mortality with interest at four percent per annum,
54 and for contracts issued on or after said date shall be the
55 "American Experience Table" of mortality with interest
56 at three and one-half percent per annum. Policies issued
57 by insurers doing business in this state may provide for
58 not more than one year preliminary term insurance: *Pro-*
59 *vided, however,* That if the premium charged for term
60 insurance under a limited payment life preliminary term

61 policy providing for the payment of all premiums thereof
62 in less than twenty years from the date of the policy, or
63 under an endowment preliminary term policy, exceeds
64 that charged for like insurance under twenty payment
65 life preliminary term policies of the same insurer, the
66 reserve thereon at the end of any year, including the first,
67 shall not be less than the reserve on a twenty payment
68 life preliminary term policy issued in the same year and
69 at the same age, together with an amount which shall be
70 equivalent to the accumulation of a net level premium
71 sufficient to provide for a pure endowment at the end
72 of the premium payment period, equal to the difference
73 between the value at the end of such period of such a
74 twenty payment life preliminary term policy and a full
75 reserve at such time of such a limited payment life or
76 endowment policy.

77 The commissioner may vary the standards of interest
78 and mortality in the case of alien insurers and in par-
79 ticular cases of invalid lives and other extra hazards.

80 Reserves for all such policies and contracts may be cal-
81 culated, at the option of the insurer, according to any
82 standards which produce greater aggregate reserves for
83 all such policies and contracts than the minimum reserves
84 required by this subsection.

85 (3) This subsection shall apply to only those policies
86 and contracts issued on or after the original operative
87 date of the Standard Nonforfeiture Law (now section
88 thirty of article thirteen of this chapter).

89 (a) The minimum standard for the valuation of all such
90 policies and contracts shall be the commissioner's reserve
91 valuation method defined in paragraph (b), three and
92 one-half percent interest, and the following tables:

93 (i) For all ordinary policies of life insurance issued on
94 the standard basis, excluding any disability and accidental
95 death benefits in such policies,—the Commissioners 1941
96 Standard Ordinary Mortality Table.

97 (ii) For all industrial life insurance policies issued on
98 the standard basis, excluding any disability and accidental
99 death benefits in such policies,—the 1941 Standard In-
100 dustrial Mortality Table.

101 (iii) For annuity and pure endowment contracts, ex-
102 cluding any disability and accidental death benefits in
103 such policies,—the 1937 Standard Annuity Mortality
104 Table.

105 (iv) For total and permanent disability benefits in or
106 supplementary to ordinary policies or contracts—Class
107 (3) Disability Table (1926) which, for active lives, shall
108 be combined with a mortality table permitted for calcu-
109 lating the reserves for life insurance policies.

110 (v) For accidental death benefits in or supplementary
111 to policies—the Inter-Company Double Indemnity Mor-
112 tality Table combined with a mortality table permitted
113 for calculating the reserves for life insurance policies.

114 (vi) For group life insurance, life insurance issued on
115 the substandard basis and other special benefits—such
116 tables as may be approved by the commissioner.

117 (b) Reserves according to the commissioner's reserve
118 valuation method, for the life insurance and endowment
119 benefits of policies providing for a uniform amount of
120 insurance and requiring the payment of uniform pre-
121 miums shall be the excess, if any, of the present value,
122 at the date of valuation, of such future guaranteed bene-
123 fits provided for by such policies, over the then present
124 value of any future modified net premiums therefor. The
125 modified net premiums for any such policy shall be such
126 uniform percentage of the respective contract premiums
127 for such benefits that the present value, at the date of
128 issue of the policy, of all such modified net premiums
129 shall be equal to the sum of the then present value of
130 such benefits provided for by the policy and the excess
131 of (A) over (B), as follows:

132 (A) A net level annual premium equal to the present
133 value, at the date of issue, of such benefits provided for
134 after the first policy year, divided by the present value,
135 at the date of issue, of an annuity of one per annum
136 payable on the first and each subsequent anniversary
137 of such policy on which a premium falls due: *Provided,*
138 *however,* That such net level annual premium shall not
139 exceed the net level annual premium on the nineteen year
140 premium whole life plan for insurance of the same amount

141 at an age one year higher than the age at issue of such
142 policy.

143 (B) A net one year term premium for such benefits
144 provided for in the first policy year.

145 Reserves according to the commissioner's reserve valua-
146 tion method for (i) life insurance policies providing for
147 a varying amount of insurance or requiring the payment
148 of varying premiums, (ii) annuity and pure endowment
149 contracts, (iii) disability and accidental death benefits
150 in all policies and contracts, and (iv) all other benefits,
151 except life insurance and endowment benefits in life in-
152 surance policies, shall be calculated by a method consist-
153 ent with the principles of this paragraph (b).

154 (c) In no event shall an insurer's aggregate reserves
155 for all life insurance policies, excluding disability and
156 accidental death benefits, be less than the aggregate re-
157 serves calculated in accordance with the method set
158 forth in paragraph (b) and the mortality table or tables
159 and rate or rates of interest used in calculating nonfor-
160 feiture benefits for such policies.

161 (d) Reserves for any category of policies, contracts or
162 benefits as established by the commissioner may be cal-
163 culated, at the option of the insurer, according to any
164 standards which produce greater aggregate reserves for
165 such category than those calculated according to the
166 minimum standard herein provided, but the rate or rates
167 of interest used shall not be higher than the correspond-
168 ing rate or rates of interest used in calculating any non-
169 forfeiture benefits provided for therein: *Provided, how-*
170 *ever,* That reserves for participating life insurance poli-
171 cies may, with the consent of the commissioner, be cal-
172 culated according to a rate of interest lower than the rate
173 of interest used in calculating the nonforfeiture benefits
174 in such policies, with the further proviso that if such
175 lower rate differs from the rate used in the calculation
176 of the nonforfeiture benefits by more than one-half per-
177 cent the insurer issuing such policies shall file with the
178 commissioner a plan providing for such equitable in-
179 creases, if any, in the cash surrender values and non-
180 forfeiture benefits in such policies as the commissioner
181 shall approve.

182 (e) If the gross premium charged by any life insurer
183 on any policy or contract is less than the net premium
184 for the policy or contract according to the mortality table,
185 rate of interest and method used in calculating the re-
186 serve thereon, there shall be maintained on such policy
187 or contract a deficiency reserve in addition to all other
188 reserves required by law. For each such policy or con-
189 tract the deficiency reserve shall be the present value,
190 according to such standard of an annuity of the differ-
191 ence between such net premium and the premium charged
192 for such policy or contract, running for the remainder of
193 the premium-paying period.

Sec. 10. *Valuation of Bonds.*—(a) All bonds or other
2 evidences of debt having a fixed term and rate of interest
3 held by any insurer may, if amply secured and not in
4 default as to principal or interest, be valued as follows:

5 (1) If purchased at par, at the par value.

6 (2) If purchased above or below par, on the basis of
7 the purchase price adjusted so as to bring the value to par
8 at maturity and so as to yield in the meantime the effective
9 rate of interest at which the purchase was made, or in
10 lieu of such method, according to such accepted method of
11 valuation as is approved by the commissioner.

12 (3) Purchase price shall in no case be taken at a higher
13 figure than the actual market value at the time of pur-
14 chase, plus actual brokerage, transfer, postage or express
15 charges paid in the acquisition of such securities.

16 (4) Unless otherwise provided by valuation established
17 or approved by the commissioner, no such security shall
18 be carried at above the call price for the entire issue during
19 any period within which the security may be so called.

20 (b) The commissioner shall have full discretion in
21 determining the method of calculating values according
22 to the rules set forth in this section.

Sec. 11. *Valuation of Other Securities.*—(a) Securities,
2 other than those referred to in section ten of this article,
3 held by an insurer shall be valued, in the discretion of the
4 commissioner, at their market value, or at their appraised
5 value, or at prices determined by him as representing their

6 fair market value, all consistent with any current method
7 for the valuation of any such security formulated or
8 approved by the commissioner.

9 (b) Preferred or guaranteed stocks or shares while
10 paying full dividends may be carried at a fixed value in
11 lieu of market value, at the discretion of the commissioner
12 and in accordance with such method of computation as he
13 may approve.

Sec. 12. *Valuation of Real Property.*—(a) Real property
2 acquired pursuant to a mortgage loan or contract for sale,
3 in the absence of a recent appraisal deemed by the com-
4 missioner to be reliable, shall not be valued at an amount
5 greater than the unpaid principal of the defaulted loan or
6 contract at the date of such acquisition, together with any
7 taxes and expenses paid or incurred in connection with
8 such acquisition, and the cost of improvements thereafter
9 made by the insurer and any amounts thereafter paid by
10 the insurer on assessments levied for improvements in
11 connection with the property.

12 (b) Other real property held by an insurer shall not be
13 valued at an amount in excess of fair value as determined
14 by recent appraisal. If valuation is based on an appraisal
15 more than three years old, the commissioner may at his
16 discretion call for and require a new appraisal in order
17 to determine fair value.

Sec. 13. *Valuation of Mortgages.*—Mortgages or deeds
2 of trust on real property shall be valued in an amount
3 equal to the unpaid balance but not exceeding sixty-six
4 and two-thirds percent of the fair value of such real
5 property, except that any amount in excess of sixty-six
6 and two-thirds percent may be included to the extent the
7 loan evidenced by such deed of trust or mortgage is
8 guaranteed by an agency of the federal government.

Article 8. Investments

Section

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4. Approval of investments.
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8. Foreign securities.
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14. Common stocks.
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16. Real property.
17. Disposal of ineligible securities.
18. Revenue bonds.
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20. Personal liability of officers, directors, employees and investment committee; misdemeanor.
21. Stock of other insurers; investment in insurer's own stock; state and national bank stocks.
22. Investments of foreign and alien insurers.

Section 1. *Scope of Article*.—Except for section twenty-two of this article which relates to investments of foreign and alien insurers, this article applies to domestic insurers only.

Sec. 2. *Authorized Investments*.—The capital, surplus, assets and all other funds of insurers shall be invested only as provided in this article. The eligibility of an investment shall be determined as of the date of its making or acquisition. Any investment limitation based upon the amount of the insurer's assets or particular funds shall relate to assets or funds as shown by the insurer's annual statement as of the December thirty-first last preceding date of investment.

Sec. 3. *General Qualifications*.—(a) No security or investment (other than real property acquired pursuant to section sixteen of this article) shall be eligible for acquisition unless it is interest bearing or interest accruing or dividend or income paying, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit, the interest or income accruing thereon. Defaults in interest or income occurring subsequent to acquisition of an investment shall not affect allowance thereof as an asset.

(b) No security or investment shall be eligible for purchase at a price above its market value.

(c) No provision of this article shall prohibit the acquisition by an insurer of other or additional securities or

15 property if received as a dividend or as a lawful distribu-
16 tion of assets, or if acquired pursuant to a lawful and bona
17 fide agreement of bulk reinsurance, merger, or consolida-
18 tion. Any investment so acquired through bulk reinsur-
19 ance, merger, or consolidation, which is not otherwise
20 eligible under this article, shall be disposed of pursuant
21 to section seventeen of this article if securities, or pur-
22 suant to section sixteen of this article if real property.

Sec. 4. *Approval of Investments.*—No investment or
2 loan shall be made by an insurer unless the same has been
3 authorized or approved by the insurer's board of directors
4 or by a committee authorized thereby and charged with
5 the duty of supervising or making such investment or loan.
6 The minutes of any such committee shall be recorded and
7 regular reports of such committee shall be submitted to
8 the board of directors. This section does not apply to loans
9 made by a life insurer on policies or annuity contracts.

Sec. 5. *Limitation of Investments in One Person.*—An
2 insurer shall not, except with the consent of the commis-
3 sioner, have at one time any combination of investments
4 in or loans upon the security of the obligations, property, or
5 securities of any one person, institution or corporation,
6 aggregating an amount exceeding five percent of the
7 insurer's assets. This restriction shall not apply to invest-
8 ments in or loans upon the security of general obligations
9 of the United States or fully guaranteed by the United
10 States or the District of Columbia or any state of the
11 United States or of political subdivisions of the state of
12 West Virginia or other states of the United States, made
13 pursuant to section seven of this article, or include policy
14 loans made under section nineteen of this article or invest-
15 ments in foreign securities pursuant to section eight of
16 this article.

Sec. 6. *Class Limitations on Investments.*—(a) Every
2 insurer shall invest and maintain invested funds to the
3 amount of the minimum paid-in capital or surplus re-
4 quired under this chapter to transact like kinds of insur-
5 ance only in cash and the securities described in section
6 seven of this article (government obligations).

7 (b) The remaining assets of any insurer may be invest-
8 ed in the classes of securities described in the following
9 sections of this article, and subject to restrictions or limi-
10 tations contained in such sections: section seven (govern-
11 ment securities), section eight (foreign securities) for
12 those insurers who qualify under said section, section nine
13 (bills of exchange, etc.), section eleven (corporate obli-
14 gations), section twelve (building and loan shares, etc.),
15 section thirteen (preferred or guaranteed stock), section
16 fifteen (real property mortgages), section sixteen (real
17 property), section eighteen (revenue bonds), and, subject
18 to the limitations of paragraph (c) of this section, section
19 ten (loans upon pledge of securities) and section fourteen
20 (common stocks).

21 (c) No insurer shall invest in more than five per centum
22 of the total number of shares of any one corporation, nor
23 more than two per centum of the assets of such insurer
24 in the shares of any one corporation, nor shall any insurer
25 invest in shares and securities of corporations in the
26 aggregate exceeding the capital and/or surplus of such
27 insurer, the foregoing limitations to apply to all invest-
28 ments made pursuant to sections ten and fourteen of this
29 article.

Sec. 7. *Government Obligations.*—An insurer may in-
2 vest any of its funds in:

3 (a) Bonds or securities which are the direct obligation
4 of or which are secured or guaranteed in whole or in part
5 as to principal and interest by the United States, any state
6 or territory of the United States, or the District of Co-
7 lumbia, where there exists the power to levy taxes for
8 the prompt payment of the principal and interest of such
9 bonds or evidences of indebtedness, and, in bonds issued
10 by the federal land banks.

11 (b) Bonds or evidences of indebtedness which are direct
12 general obligations of any county, district, city, town,
13 village, school district, park district, or other political
14 subdivision of this state or any other state or territory
15 of the United States, or the District of Columbia, which
16 shall not be in default in the payment of any of its general
17 obligation bonds, either principal or interest, at the date

18 of such investment; where they are payable from ad
19 valorem taxes levied on all the taxable property located
20 therein and the total indebtedness after deducting sink-
21 ing funds and all debts incurred for self-sustaining public
22 works does not exceed ten per centum of the actual value
23 of all taxable property therein on the basis of which the
24 last assessment was made before the date of such invest-
25 ment.

Sec. 8. *Foreign Securities.*—(a) An insurer authorized
2 to transact insurance in a foreign country may invest any
3 of its funds, in aggregate amount not exceeding by more
4 than five percent its deposit and reserve obligations in-
5 curred in such country, in securities of or in such country
6 possessing characteristics and of a quality similar to those
7 required pursuant to this chapter for investments in the
8 United States.

9 (b) An insurer may invest any of its funds, in an ag-
10 gregate amount not exceeding five percent of its assets,
11 in addition to any amount permitted pursuant to para-
12 graph (a) of this section, in obligations of the govern-
13 ments of Canadian provinces or municipalities, and in
14 obligations of Canadian corporations which are otherwise
15 of equal quality to like United States public or corporate
16 securities as prescribed in this article.

Sec. 9. *Certificates, Acceptances and Bills of Exchange.*
2 —Subject to the limit set forth in sections five and six of
3 this article, an insurer may invest in bank certificates of
4 deposit and bankers' acceptances, and other bills of ex-
5 change of the kind and maturities made eligible by law
6 for purchase in the open market by federal reserve banks.

Sec. 10. *Loans Upon Pledge of Securities.*—An insurer
2 may invest in loans upon the pledge of bonds, mortgages,
3 preferred or guaranteed stocks, debentures, securities or
4 evidence of indebtedness acceptable as investments for
5 the lending insurer under the provisions of this article
6 and subject to the same limits as to each security as is
7 provided in this article for investment therein, if the face
8 or current market value, whichever is less, of such mort-
9 gages is more than the amount loaned thereon, and the

10 current market value of such bonds, preferred or guar-
11 anteed stocks, debentures, securities or evidences of in-
12 debtedness is at least twenty per centum more than the
13 amount loaned thereon. These restrictions do not apply
14 to loans on the pledge of bonds or securities of or guar-
15 anteed by the United States.

Sec. 11. *Corporate Obligations.*—Subject to the limits
2 set forth in sections five and six of this article, an insurer
3 may invest in bonds or evidence of indebtedness of any
4 solvent corporation or corporations (other than those
5 organized and chartered for the sole purpose of holding
6 the stock of other corporations), including public utility
7 corporations and bonds or evidence of indebtedness issued
8 or guaranteed by railroad corporations (including cer-
9 tificates of an equipment trust created on behalf of any
10 such railroad corporation), created under the laws of the
11 United States or of any state of the United States or the
12 District of Columbia.

Sec. 12. *Building and Savings and Loan Shares, Inter-
2 national Bank.*—Subject to the limits set forth in sections
3 five and six of this article, an insurer may invest in shares
4 of insured state chartered building and loan associations
5 and federal savings and loan associations, if such shares
6 are insured by the Federal Savings and Loan Insurance
7 Corporation and may invest in obligations issued or guar-
8 anteed by the International Bank for Reconstruction and
9 Development.

Sec. 13. *Preferred or Guaranteed Stock.*—Subject to the
2 limits set forth in sections five and six of this article,
3 an insurer may invest in preferred or guaranteed stock
4 issued or guaranteed by any solvent corporation or cor-
5 porations created under the laws of the United States or
6 any state, if such stock is not in default as to payment of
7 any current dividends.

Sec. 14. *Common Stocks.*—Subject to the limits set
2 forth in sections five and six of this article, an insurer
3 may invest in the nonassessable shares of capital stock
4 of any solvent corporation created under the laws of the
5 United States or of any state if such corporation has paid

6 cash dividends of not less than four percent per annum
7 on the average market price of such common stock for a
8 period of five fiscal years next preceding the date of
9 acquisition by such insurer or shall have earned, during
10 such period, an aggregate sum applicable to dividends on
11 its common stock equal at least to an aggregate sum which
12 would have been sufficient to pay dividends of four per-
13 cent per annum on the average market price of all its
14 common stocks outstanding during such period.

Sec. 15. *Real Property Mortgages.*—(a) An insurer may
2 invest in entire first mortgages on improved unencum-
3 bered real estate or the entire issue of bonds secured
4 thereby located within any state worth at least fifty per
5 centum more than the amount loaned thereon, based on
6 sound appraisal by a competent appraiser and duly cer-
7 tified by him, provided that the investment in any one
8 mortgage or any one issue of bonds or any one contract
9 for deed does not exceed twenty thousand dollars or two
10 per centum of the insurer's assets, whichever is the
11 greater.

12 (b) "Improved real estate", as used in this section,
13 means all farm land which has been reclaimed and is
14 used for the purpose of husbandry, whether for tillage
15 or pasture, and all real property on which permanent
16 buildings suitable for residence or commercial use are
17 situated.

18 (c) Real property shall not be deemed to be encum-
19 bered within the meaning of this section by reason of
20 the existence of instruments reserving or excepting min-
21 eral rights and interests, rights-of-way, sewer rights and
22 rights in walls or easements, nor by reason of building
23 restrictions or other restrictive covenants, nor by reason
24 of the fact that it is subject to lease under which rents
25 or profits are reserved to the owners: *Provided*, That the
26 security for such investment is a full and unrestricted
27 first lien upon such real property and that there is no
28 condition nor right of re-entry or forfeiture under which
29 such investments can be cut off, subordinated or other-
30 wise disturbed.

31 (d) Notwithstanding the restrictions set forth in this

32 section any insurer may invest (1) in bonds or notes
33 secured by mortgage or trust deed insured by the federal
34 housing administration or in debentures issued by it
35 under the terms of an act of Congress of the United
36 States entitled the "National Housing Act", as heretofore
37 or hereafter amended and (2) in securities issued by
38 national mortgage associations established by or under
39 the authority of the National Housing Act, and (3) in
40 bonds or notes secured by mortgage or trust deed guar-
41 anteed as to principal by the administrator of veterans'
42 affairs pursuant to the provisions of Title III of act of
43 Congress of the United States as of June twenty-two,
44 one thousand nine hundred forty-four, entitled the "Serv-
45 icemen's Re-Adjustment Act of one thousand nine hun-
46 dred forty-four", as heretofore or hereafter amended.

47 (e) Notwithstanding the restrictions herein set forth
48 the amount of any first mortgage investment as limited
49 by paragraph (a) of this section may be exceeded if and
50 to the extent that such excess shall be guaranteed by the
51 administrator of veterans' affairs pursuant to the pro-
52 visions of Title III of an act of Congress of the United
53 States of June twenty-two, one thousand nine hundred
54 forty-four, entitled the "Servicemen's Re-Adjustment Act
55 of one thousand nine hundred forty-four", as heretofore
56 or hereafter amended.

57 (f) No such insurer shall in any manner, either directly
58 or indirectly, by means of corporations, holding com-
59 panies, trustees or otherwise, invest in real estate secu-
60 rities junior to first mortgages unless the first mortgage
61 in its entirety is owned by the insurer.

Sec. 16. *Real Property.*—(a) No insurer may acquire or
2 hold real property except as follows:

3 (1) Such as shall be requisite for the convenient ac-
4 commodation of the transaction of its own business; the
5 amount invested in such real property shall not exceed
6 ten per centum of the investing insurer's assets but the
7 commissioner may grant permission to the insurer to
8 invest in real property for such purpose, in such increased
9 amount as he may deem proper on the showing made if,
10 upon a hearing held before him, he shall find that the

11 amount represented by such percentage of the insurer's
12 assets is insufficient to provide convenient accommoda-
13 tions for the insurer's business;

14 (2) Such as shall have been mortgaged to it in good
15 faith by way of security for loans previously contracted
16 or for monies due;

17 (3) Such as shall have been conveyed to it in satis-
18 faction of debts previously contracted in course of its
19 dealings;

20 (4) Such as shall have been purchased at sales or judg-
21 ments, decrees or mortgages obtained or made for such
22 debts; and

23 (5) Such unencumbered real property as shall have
24 been acquired in whole or in part, in exchange for real
25 property of approximately the same value theretofore
26 legally acquired and held by it;

27 (6) Such as shall be held as security for contracts for
28 deeds;

29 (7) (A) Such as may be acquired for the purpose of
30 leasing the same to any person, firm, or corporation, or
31 real estate already leased under the following conditions:

32 a. Where there has already been erected on said prop-
33 erty a building or other improvements satisfactory to the
34 purchaser, or where the lessee shall at its own cost erect
35 thereon, free of liens, a building or other improvements
36 satisfactory to the lessor, or where the lessor under the
37 terms and conditions of a lease executed and entered into
38 simultaneously with the purchaser of the property agrees
39 to erect a building or other improvements on said prop-
40 erty.

41 b. That the said improvements shall remain on the said
42 property during the period of the lease, and in cases where
43 the said improvements are put upon said property at the
44 cost of the lessee the said improvements at the termina-
45 tion of the lease shall vest, free of liens, in the owner of
46 the real estate.

47 c. That during the term of the lease the lessee shall
48 keep and maintain the said improvements in good repair.
49 Real estate acquired pursuant to the provisions of this
50 part (A) shall not be valued in any amount exceeding

51 the amount actually invested reduced each year by equal
52 decrements sufficient to write off at least seventy-five per-
53 cent of the investment at the normal termination of the
54 lease or at the end of thirty years should the term of
55 the lease be for a longer period. The total investments
56 of any insurer under this part (A) shall not exceed five
57 percent of its assets, nor more than the sum of its capital
58 and surplus, whichever is less.

59 (B) Subject to approval of the commissioner, real
60 estate for recreation, hospitalization, convalescence and
61 retirement purposes of its employees. Such investment
62 shall not exceed five percent of the company's surplus.

63 (C) No investment shall be made by any insurer pur-
64 suant to this subparagraph (7) which will cause such
65 insurer's investment in all real property owned or held
66 by it directly or indirectly to exceed ten percent of its
67 assets.

68 (b) All real property acquired for purposes, or in the
69 manner, specified in subparagraphs other than subpara-
70 graphs (1), (6) and (7) of paragraph (a) of this section
71 may be held for a period of five years after the insurer
72 shall have acquired title to the same and thereafter until
73 the date specified in an order issued by the commissioner
74 directing the insurer to dispose of the same. The date
75 specified in such order shall be not less than six months
76 from the date of the service of the said order upon the
77 insurer. No such order shall be issued without a hearing
78 and a determination by the commissioner that the inter-
79 ests of the insurer will not suffer materially by the sale
80 of the same within the period to be specified.

Sec. 17. *Disposal of Ineligible Securities.*—(a) Secu-
2 rities or other assets not proper investments under this
3 article, but lawfully acquired through merger or consoli-
4 dation with any other insurer or through a reinsurance
5 agreement, if such assets when originally acquired consti-
6 tuted legal investments for the merging, consolidating or
7 ceding insurer which acquired them, and securities, obli-
8 gations or other assets incident to the adjustment of any
9 debt or investment when deemed by the board of directors
10 or investment committee to be in the best interests of the

11 insurer, shall not be considered to be acquired in viola-
12 tion of this article; but all such securities, obligations or
13 other assets so acquired or accepted shall be disposed of
14 not later than five years after the date of such acquisition
15 or acceptance.

16 (b) The commissioner may, upon application by the
17 insurer, extend the time for the disposition of such secu-
18 rities, obligations or other assets described in paragraph

19 (a) of this section, if he is satisfied that such insurer will
20 suffer materially by the forced sale thereof.

21 (c) Any ineligible investment unlawfully acquired by
22 an insurer shall be disposed of forthwith.

Sec. 18. *Revenue Bonds*.—Any insurer may invest, sub-
22 ject to the limits prescribed by sections five and six of
3 this article, in revenue bonds issued by any state or the
4 United States, or any agency or instrumentality thereof,
5 or any county, city, town, village or district of any state,
6 if by statutory or other legal requirements applicable
7 thereto such revenue bonds are payable as to both prin-
8 cipal and interest from special revenues pledged or other-
9 wise appropriated or by law required to be provided for
10 the purpose of such payment (but not including any ob-
11 ligations payable solely out of special assessments on
12 properties benefited by local improvements): *Provided*,
13 That such revenue bonds constitute a first and paramount
14 lien upon such special revenues and that such bonds are
15 not in default as to any payment of principal or interest.
16 No insurer shall invest in more than five percent of any
17 one issue of such revenue bonds, nor more than two per-
18 cent of its assets in such revenue bonds payable from any
19 one public project, nor shall any insurer invest in such
20 revenue bonds in the aggregate exceeding ten percent of
21 its assets, except that any insurer holding a valid license
22 in this state on the first day of January, one thousand
23 nine hundred fifty-six, and on such date possessed of such
24 revenue bonds in excess of such limits, may apply to the
25 commissioner for an extension of time for such period as
26 the commissioner deems proper for the disposal of such
27 bonds under the provisions of section seventeen of this
28 article.

2 Sec. 19. *Policy Loans.*—A life insurer may lend to its
3 policyholders upon pledge of the policy as collateral se-
4 curity a sum not exceeding the applicable cash surrender
5 value specified in the policy.

2 Sec. 20. *Personal Liability of Officers, Directors, Em-*
3 *ployees and Investment Committee; Misdemeanor.*—Any
4 officer, director, employee, or member of the investment
5 committee of an insurer, who knowingly consents to a
6 loan or investment in violation of this article shall be
7 personally liable to the insurer for any loss resulting
8 therefrom and in addition thereto shall be guilty of a
9 misdemeanor.

2 Sec. 21. *Stock of Other Insurers; Investment in In-*
3 *surer's Own Stock; State and National Bank Stocks.*—
4 (a) In addition to such insurance stocks as may be other-
5 wise eligible under this article, an insurer may, upon
6 receiving the written consent of the commissioner, use
7 its funds for the purchase of the controlling capital stock
8 interest or of all the outstanding capital stock of another
9 insurer.
10 (b) No insurer shall invest in or loan any of its funds
11 on its own stocks nor invest in or loan any of its funds
12 on the stocks of any state or national bank.

2 Sec. 22. *Investments of Foreign and Alien Insurers.*—
3 (a) Foreign and alien insurers transacting insurance in
4 West Virginia shall have assets of the same general
5 quality as specified in this article for domestic insurers,
6 except that other investments authorized by the laws of
7 such foreign or alien insurer's state or country of domicile
8 may be recognized as assets in the discretion of the com-
9 missioner.
10 (b) A foreign insurer domiciled in a state that requires
11 West Virginia domiciled insurers to invest in the secu-
12 rities of such state a stipulated percentage or amount of
13 its reserves under its policies in force in such state, shall
14 likewise be required to invest in similar securities of
15 West Virginia a like percentage or amount of its reserves
16 under its policies in force in West Virginia.

Article 9. Administration of Deposits**Section**

1. Deposits of insurers.
2. Purpose of deposits.
3. Assets eligible for deposit.
4. Trust companies as depositories; state of West Virginia responsible.
5. Rights of insurer during solvency.
6. Excess deposits.
7. Release of deposits generally.
8. Release only on order.
9. Deposit not subject to levy.

Section 1. *Deposits of Insurers.*—The state treasurer of West Virginia shall accept and hold in trust, when made through the commissioner, deposits of securities or funds by insurers as follows:

(a) Deposits required for a license to transact insurance in West Virginia.

(b) Deposits of domestic, foreign, or alien insurers when made pursuant to the laws of other states, provinces, and countries as prerequisite for authority to transact insurance in such state, province, or country.

(c) Deposits in such additional amounts as are permitted to be made by section six of this article.

Sec. 2. *Purpose of Deposits.*—Such deposits shall be held for purposes as follows:

(a) When the deposit is required for authority to transact insurance in West Virginia the deposit shall be held for the protection of all the insurer's policyholders and creditors within the United States.

(b) When the deposit is required pursuant to the laws of another state, province, or country, the deposit shall be held for such purposes as is required by such laws, and as specified by the commissioner at the time the deposit is made.

(c) When the deposit is required pursuant to the retaliatory provisions, section sixteen of article three of this chapter, the deposit shall be held for purposes as specified in the commissioner's order requiring the deposit.

Sec. 3. *Assets Eligible for Deposit.*—(a) All such deposits required for a license to transact insurance in West Virginia shall consist of cash or any combination of the

4 government obligations described in section seven of
5 article eight of this chapter.

6 (b) All such deposits required pursuant to the laws of
7 another state, province, or country, or pursuant to the
8 retaliatory provision, section sixteen of article three of
9 this chapter, shall consist of such assets as are required or
10 permitted by such laws, or as required pursuant to such
11 retaliatory provision.

Sec. 4. *Trust Companies as Depositories; State of West
2 Virginia Responsible.*—(a) Upon request of the insurer,
3 the state treasurer may designate any solvent trust com-
4 pany or other solvent financial institution having trust
5 powers domiciled in this state as the treasurer's deposi-
6 tory to receive and hold any such deposit. Any such
7 deposit so held shall be at the expense of the insurer.

8 (b) The state of West Virginia shall be responsible for
9 the safekeeping and return of all funds and securities
10 deposited pursuant to this chapter with the state treasurer
11 or in any depository so designated by him.

Sec. 5. *Rights of Insurer During Solvency.*—So long as
2 the insurer remains solvent and complies with this chap-
3 ter it may:

4 (a) Demand, receive, sue for and recover the income
5 from the securities or cash deposited,

6 (b) Exchange and substitute for the deposited cash or
7 securities, or any part thereof, cash or eligible securities
8 of equivalent or greater value, and

9 (c) Inspect, at reasonable times, any such deposit.

Sec. 6. *Excess Deposits.*—An insurer may so deposit cash
2 or eligible securities in an amount exceeding its deposit
3 required or otherwise permitted under this chapter, such
4 excess deposit to be held for the protection of such in-
5 surer's policyholders and creditors. During the solvency
6 of the insurer any such excess deposit or part thereof shall
7 be released to the insurer upon its request. During the
8 insolvency of the insurer such excess deposit shall be
9 released only as provided in section seven of this article.

Sec. 7. *Release of Deposits Generally.*—Any deposit

2 made in this state under this chapter shall be released and
3 returned:

4 (a) To the insurer upon extinguishment by authorized
5 reinsurance or otherwise of substantially all liability of
6 the insurer for the security of which the deposit is held;

7 (b) To the insurer to the extent such deposit is in
8 excess of the amount required; or

9 (c) Upon proper order of a court of competent jurisdic-
10 tion to the receiver, conservator, rehabilitator or liquidator
11 of the insurer, or to any other properly designated official
12 or officials who succeed to the management and control of
13 the insurer's assets.

Sec. 8. *Release Only on Order.*—No such release of de-
2 posited funds shall be made except upon application to and
3 written order of the commissioner. The commissioner
4 shall have no personal liability for any such release of any
5 such deposit or part thereof so made by him in good faith.

Sec. 9. *Deposit Not Subject to Levy.*—No judgment
2 creditor or other claimant of an insurer shall levy upon
3 any deposit held pursuant to this chapter, or upon any
4 part thereof; except, that such levy may be permitted if
5 so specified in the commissioner's order requiring the
6 deposit pursuant to the retaliatory provision, section six-
7 teen of article three of this chapter.

Article 10. Rehabilitation and Liquidation

Section

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32. Levy of assessment.
33. Order to pay assessment.
34. Publication and service of assessment order.
35. Judgment upon the assessment.

Section 1. *Definitions.*—For the purpose of this article:

2 (a) “Impairment” or “insolvency”. The capital of a
3 stock insurer, or the surplus of a mutual or reciprocal
4 insurer shall be deemed to be impaired and the insurer
5 shall be deemed to be insolvent, when such insurer shall
6 not be possessed of assets at least equal to all liabilities and
7 required reserves together with its total issued and out-
8 standing capital stock if a stock insurer, or the minimum
9 surplus if a mutual or reciprocal insurer, required by this
10 chapter to be maintained for the kind or kinds of insurance
11 it is then licensed to transact.

12 (b) “Insurer” means any person, firm, corporation,
13 association or aggregation of persons doing an insurance
14 business and subject to the insurance supervisory author-
15 ity of, or to liquidation, rehabilitation, reorganization or
16 conservation by the commissioner or the equivalent in-
17 surance supervisory official of another state.

18 (c) “Delinquency proceeding” means any proceeding
19 commenced against an insurer pursuant to this article for
20 the purpose of liquidating, rehabilitating, reorganizing or
21 conserving such insurer.

22 (d) “State” means any state of the United States and
23 also the District of Columbia, Alaska, Hawaii, and Puerto
24 Rico.

25 (e) “Foreign country” means territory not in any state.

26 (f) "Domiciliary state" means the state in which an
27 insurer is incorporated or organized, or in the case of an
28 insurer incorporated or organized in a foreign country, the
29 state in which such insurer, having become authorized to
30 do business in such state, has at the commencement of
31 delinquency proceedings, the largest amount of its assets
32 held in trust and assets held on deposit for the benefit of
33 its policyholders or policyholders and creditors in the
34 United States, and any such insurer is deemed to be
35 domiciled in such state.

36 (g) "Ancillary state" means any state other than a
37 domiciliary state.

38 (h) "Reciprocal state" means any state other than this
39 state in which in substance and effect the provisions of the
40 uniform insurers liquidation act, as defined in section
41 twenty-one of this article, are in force, including the pro-
42 visions requiring that the insurance commissioner or
43 equivalent insurance supervisory official be the receiver
44 of a delinquent insurer.

45 (i) "General assets" means all property, real, personal
46 or otherwise, not specifically mortgaged, pledged, de-
47 posited or otherwise encumbered for the security or bene-
48 fit of specified persons or a limited class or classes of per-
49 sons, and as to such specifically encumbered property the
50 term includes all such property or its proceeds in excess
51 of the amount necessary to discharge the sum or sums
52 secured thereby. Assets held in trust and assets held on
53 deposit for the security or benefit of all policyholders or
54 all policyholders and creditors in the United States shall
55 be deemed general assets.

56 (j) "Preferred claim" means any claim with respect to
57 which the law of the state or of the United States accords
58 priority of payments from the general assets of the insurer.

59 (k) "Special deposit claim" means any claim secured
60 by a deposit made pursuant to statute for the security or
61 benefit of a limited class or classes of persons, but not
62 including any general assets.

63 (1) "Secured claim" means any claim secured by mort-
64 gage, trust deed, pledge, deposit as security, escrow, or
65 otherwise, but not including special deposit claim or claims

66 against general assets. The term also includes claims
67 which more than four months prior to the commencement
68 of delinquency proceedings in the state of the insurer's
69 domicile have become liens upon specific assets by reason
70 of judicial process.

71 (m) "Receiver" means receiver, liquidator, rehabilita-
72 tor, or conservator as the context may require.

Sec. 2. *Jurisdiction, Venue and Appeal of Delinquency*
2 *Proceedings; Exclusive Remedy.*—(a) The circuit courts
3 of this state or the judges thereof in vacation are vested
4 with exclusive original jurisdiction of delinquency pro-
5 ceedings under this article, and are authorized to make
6 all necessary and proper orders to carry out the purposes
7 of this article.

8 (b) The venue of delinquency proceedings against a
9 domestic insurer shall be in the circuit court of the county
10 of the insurer's principal place of business. The venue of
11 such proceedings against foreign and alien insurers shall
12 be in the circuit court of Kanawha County.

13 (c) Delinquency proceedings pursuant to this article
14 shall constitute the sole and exclusive method of liquidat-
15 ing, rehabilitating, reorganizing or conserving an insurer,
16 and no court shall entertain a petition for the commence-
17 ment of such proceedings unless the same has been filed
18 in the name of the state on the relation of the insurance
19 commissioner.

20 (d) An appeal shall lie to the supreme court of appeals
21 from an order granting or refusing rehabilitation, liquida-
22 tion, or conservation, and from every other order in de-
23 linquency proceedings having the character of a final
24 order as to the particular portion of the proceedings em-
25 braced therein.

Sec. 3. *Commencement of Delinquency Proceedings.*—
2 The insurance commissioner shall commence any such
3 proceeding by an application to the court for an order
4 directing the insurer to show cause why the commissioner
5 should not have the relief prayed for. On the return of
6 such order to show cause, and after a full hearing, the
7 court shall either deny the application or grant the appli-

8 cation, together with such other relief as the nature of
9 the case and the interests of policyholders, creditors,
10 stockholders, members, subscribers, or the public may
11 require.

Sec. 4. *Injunctions.*—(a) Upon application by the com-
2 missioner for such an order to show cause, or at any time
3 thereafter, the court may without notice issue an injunc-
4 tion restraining the insurer, its officers, directors, stock-
5 holders, members, subscribers, agents and all other per-
6 sons from the transaction of its business or the waste or
7 disposition of its property until the further order of the
8 court.

9 (b) The court may at any time during a proceeding
10 under this article issue such other injunctions or orders
11 as may be deemed necessary to prevent interference with
12 the commissioner or the proceeding, or waste of the assets
13 of the insurer, or the commencement or prosecution of any
14 actions, or the obtaining of preferences, judgments, attach-
15 ments or other liens, or the making of any levy against
16 the insurer or against its assets or any part thereof.

17 (c) Notwithstanding any other provision of law, no
18 bond shall be required of the commissioner as a prerequi-
19 site for the issuance of any injunction or restraining order
20 pursuant to this section.

Sec. 5. *Grounds For Rehabilitation of Domestic Insurers.*

2 —The commissioner may apply to the court for an order
3 appointing him as receiver of and directing him to reha-
4 bilitate a domestic insurer upon one or more of the follow-
5 ing grounds. That the insurer:

6 (a) Is impaired or insolvent.

7 (b) Has refused to submit its books, records, accounts
8 or affairs to reasonable examination by the commissioner.

9 (c) Has failed to comply with an order of the commis-
10 sioner to make good an impairment of capital or surplus
11 or both.

12 (d) Has transferred or attempted to transfer substan-
13 tially its entire property or business, or has entered into
14 any transaction the effect of which is to merge substan-
15 tially its entire property or business in that of any other

16 insurer without having first obtained the written approval
17 of the commissioner.

18 (e) Has wilfully violated its charter or any law of this
19 state.

20 (f) Has an officer, director, or manager who has refused
21 to be examined under oath concerning its affairs, for
22 which purpose the commissioner is hereby authorized to
23 conduct and to enforce by all appropriate and available
24 means any such examination under oath in any other
25 state or territory of the United States, in which any such
26 officer, director, or manager may then presently be, to the
27 full extent permitted by the laws of such other state or
28 territory, this special authorization considered.

29 (g) Has been the subject of an application for the
30 appointment of a receiver, trustee, custodian, or sequestra-
31 tor of the insurer or its property otherwise than pursuant
32 to the provisions of this chapter, but only if such appoint-
33 ment has been made or is imminent and its effect is or
34 would be to oust the courts of this state of jurisdiction
35 hereunder.

36 (h) Has consented to such an order through a majority
37 of its directors, stockholders, members or subscribers.

38 (i) Has failed to pay a final judgment rendered against
39 it in this state upon any insurance contract issuer or
40 assumed by it, within thirty days after the judgment
41 became final or within thirty days after the time for
42 taking an appeal has expired or within thirty days after
43 dismissal of an appeal before final determination, which-
44 ever date is the later.

2 Sec. 6. *Grounds for Liquidation.*—The commissioner
3 may apply to the court for an order appointing him as
4 receiver (if his appointment as receiver shall not be then
5 in effect) and directing him to liquidate the business of a
6 domestic insurer or of the United States branch of an
7 alien insurer having trusteed assets in this state, regard-
8 less of whether or not there has been a prior order direct-
9 ing him to rehabilitate such insurer, upon any of the
10 grounds specified in section five of this article, or if such
insurer:

11 (a) Has ceased transacting business for a period of one
12 year, or

13 (b) Is an insolvent insurer and has commenced volun-
14 tary liquidation or dissolution, or attempts to commence
15 or prosecute any action or proceeding to liquidate its
16 business or affairs, or to dissolve its corporate charter, or
17 to procure the appointment of a receiver, trustee, cus-
18 todian, or sequestrator under any law except this chapter.

Sec. 7. *Grounds for Conserving Assets of Foreign In-*
2 *surers.*—The commissioner may apply to the court for an
3 order appointing him as receiver or ancillary receiver, and
4 directing him to conserve the assets within this state, of
5 a foreign insurer upon any of the following grounds:

6 (a) Upon any of the grounds specified in sections five
7 or six of this article, or

8 (b) Upon the ground that its property has been seques-
9 trated in its domiciliary sovereignty or in any other
10 sovereignty.

Sec. 8. *Grounds for Conserving Assets of Alien Insurers.*
2 —The commissioner may apply to the court for an order
3 appointing him as receiver or ancillary receiver, and
4 directing him to conserve the assets within this state, of
5 any alien insurer upon any of the following grounds:

6 (a) Upon any of the grounds specified in sections five
7 or six of this article.

8 (b) Upon the ground that the insurer has failed to
9 comply, within the time designated by the commissioner,
10 with an order made by him to make good an impairment
11 of its trusteed funds, or

12 (c) Upon the ground that the property of the insurer
13 has been sequestrated in its domiciliary sovereignty or
14 elsewhere.

Sec. 9. *Grounds for Ancillary Liquidation of Foreign In-*
2 *surers.*—The commissioner may apply to the court for an
3 order appointing him as ancillary receiver of and directing
4 him to liquidate the business of a foreign insurer having
5 assets, business, or claims in this state upon the appoint-
6 ment in the domiciliary state of such insurer of a receiver,

7 liquidator, conservator, rehabilitator or other officer by
8 whatever name called for the purpose of liquidating the
9 business of such insurer.

Sec. 10. *Order of Rehabilitation.*—(a) An order to re-
2 habilitate a domestic insurer shall direct the commissioner
3 forthwith to take possession of the property of the insurer
4 and to conduct the business thereof, and to take such steps
5 toward removal of the causes and conditions which have
6 made rehabilitation necessary as the court may direct.

7 (b) If at any time the commissioner deems that further
8 efforts to rehabilitate the insurer would be useless, he
9 may apply to the court for an order of liquidation.

10 (c) The commissioner, or any interested person upon
11 due notice to the commissioner, at any time may apply to
12 the court for an order terminating the rehabilitation pro-
13 ceedings and permitting the insurer to resume possession
14 of its property and the conduct of its business, but no such
15 order shall be granted except when, after a full hearing,
16 the court has determined that the purposes of the pro-
17 ceeding have been fully accomplished.

Sec. 11. *Order of Liquidation of Domestic Insurers.*—

2 (a) An order to liquidate the business of a domestic in-
3 surer shall direct the commissioner forthwith to take
4 possession of the property of the insurer, to liquidate its
5 business, to deal with the insurer's property and business
6 in his own name as insurance commissioner or in the name
7 of the insurer, as the court may direct, and to give notice
8 to all creditors who may have claims against the insurer
9 to present such claims.

10 (b) The commissioner may apply for and secure an
11 order dissolving the corporate existence of a domestic
12 insurer upon his application for an order of liquidation of
13 such insurer or at any time after such order has been
14 granted.

Sec. 12. *Order of Liquidation of Alien Insurers.*—An
2 order to liquidate the business of a United States branch
3 of an alien insurer having trusteed assets in this state shall
4 be in the same terms as those prescribed for domestic
5 insurers, save and except only that the assets of the busi-

6 ness of such United States branch shall be the only assets
7 included therein.

Sec. 13. *Order of Conservation or Ancillary Liquidation
2 of Foreign or Alien Insurers.*—(a) An order to conserve
3 the assets of a foreign or alien insurer shall require the
4 commissioner forthwith to take possession of the property
5 of the insurer within this state and to conserve it, subject
6 to the further direction of the court.

7 (b) An order to liquidate the assets in this state of a
8 foreign insurer shall require the commissioner forthwith
9 to take possession of the property of the insurer within
10 this state and to liquidate it subject to the orders of the
11 court and with due regard to the rights and powers of the
12 domiciliary receiver, as provided in this article.

Sec. 14. *Conduct of Delinquency Proceedings Against
2 Domestic and Alien Insurers.*—(a) Whenever under this
3 article a receiver is to be appointed in delinquency pro-
4 ceedings for a domestic or alien insurer, the court shall
5 appoint the insurance commissioner as such receiver. The
6 court shall order the commissioner forthwith to take pos-
7 session of the assets of the insurer and to administer the
8 same under the orders of the court.

9 (b) As domiciliary receiver, the commissioner shall be
10 vested by operation of law with the title to all of the
11 property, contracts, and rights of action and all of the
12 books and records of the insurer, wherever located, as of
13 the date of entry of the order directing him to rehabilitate
14 or liquidate a domestic insurer or to liquidate the United
15 States branch of an alien insurer domiciled in this state,
16 and he shall have the right to recover the same and reduce
17 the same to possession; except that ancillary receivers in
18 reciprocal states shall have, as to assets located in their
19 respective states, the rights and powers which are herein
20 prescribed for ancillary receivers appointed in this state
21 as to assets located in this state.

22 (c) The recording of a certified copy of the order direct-
23 ing possession to be taken in the office of the clerk of the
24 county court of the county where the proceedings are
25 pending and in the office of the clerk of the county court

26 of any county wherein the insurer has property or other
27 assets, recorded in the same manner as deeds to real
28 property are recorded, shall impart the same notice as
29 would be imparted by a deed, bill of sale, or other evi-
30 dence of title duly recorded or filed.

31 (d) The commissioner as domiciliary receiver shall be
32 responsible for the proper administration of all assets
33 coming into his possession or control. The court may at
34 any time require a bond from him or his deputies if
35 deemed desirable for the protection of such assets.

36 (e) Upon taking possession of the assets of an insurer,
37 the domiciliary receiver shall, subject to the direction of
38 the court, immediately proceed to conduct the business of
39 the insurer or to take such steps as are authorized by this
40 article for the purpose of rehabilitating, liquidating, or
41 conserving the affairs or assets of the insurer.

42 (f) In connection with delinquency proceedings, the
43 commissioner may appoint one or more special deputy
44 commissioners of insurance to act for him and may employ
45 such counsel, clerks, and assistants as he deems necessary.
46 The compensation of the special deputies, counsel, clerks,
47 or assistants and all expenses of taking possession of the
48 insurer and of conducting the proceedings shall be fixed
49 by the receiver, subject to the approval of the court, and
50 shall be paid out of the funds or assets of the insurer.
51 Within the limits of duties imposed upon them, special
52 deputies shall possess all the powers given to and, in the
53 exercise of those powers, shall be subject to all of the
54 duties imposed upon the receiver with respect to such
55 proceedings.

Sec. 15. *Conduct of Delinquency Proceedings Against*
2 *Foreign Insurers.*—(a) Whenever under this article an
3 ancillary receiver is to be appointed in delinquency pro-
4 ceedings for an insurer not domiciled in this state, the
5 court shall appoint the insurance commissioner as ancil-
6 lary receiver. The commissioner shall file a petition re-
7 questing the appointment on the grounds set forth in sec-
8 tion nine of this article if he finds that there are sufficient
9 assets of the insurer located in this state to justify the
10 appointment of an ancillary receiver, or if ten or more

11 persons resident in this state having claims against such
12 insurer file a petition with the commissioner requesting
13 the appointment of such ancillary receiver.

14 (b) The domiciliary receiver for the purpose of liqui-
15 dating an insurer domiciled in a reciprocal state shall be
16 vested by operation of law with the title to all of the
17 property, contracts, and rights of action and all of the
18 books and records of the insurer located in this state, and
19 he shall have the immediate right to recover balances due
20 from local agents and to obtain possession of any books
21 and records of the insurer found in this state. He shall
22 also be entitled to recover the other assets of the insurer
23 located in this state, except that upon the appointment of
24 an ancillary receiver in this state, the ancillary receiver
25 shall during the ancillary receivership proceedings have
26 the sole right to recover such other assets. The ancillary
27 receiver shall, as soon as practicable, liquidate from their
28 respective securities those special deposit claims and
29 secured claims which are proved and allowed in the
30 ancillary proceedings in this state, and shall pay the
31 necessary expenses of the proceedings. All remaining
32 assets he shall promptly transfer to the domiciliary re-
33 ceiver. Subject to the foregoing provisions, the ancillary
34 receiver and his deputies shall have the same powers and
35 be subject to the same duties with respect to the adminis-
36 tration of such assets as a receiver of an insurer domiciled
37 in this state.

38 (c) The domiciliary receiver of an insurer domiciled
39 in a reciprocal state may sue in this state to recover any
40 assets of such insurer to which he may be entitled under
41 the laws of this state.

Sec. 16. *Claims of Nonresidents Against Domestic In-*
2 *surers.*—(a) In a delinquency proceeding begun in this
3 state against a domestic insurer, claimants residing in
4 reciprocal states may file claims either with the ancillary
5 receivers, if any, in their respective states, or with the
6 domiciliary receiver. All such claims must be filed on or
7 before the last date fixed for the filing of claims in the
8 domiciliary delinquency proceedings.

9 (b) Controverted claims belonging to claimants resid-

10 ing in reciprocal states may either be proved in this state,
11 or if ancillary proceedings have been commenced in such
12 reciprocal states, may be proved in those proceedings. In
13 the event a claimant elects to prove his claim in ancillary
14 proceedings, if notice of the claim and opportunity to
15 appear and be heard is afforded the domiciliary receiver
16 of this state as provided in section seventeen of this
17 article with respect to ancillary proceedings in this state,
18 the final allowance of such claim by the courts in the
19 ancillary state shall be accepted in this state as conclusive
20 as to its amount and shall also be accepted as conclusive
21 as to its priority, if any, against special deposits or other
22 security located within the ancillary state.

Sec. 17. *Claims Against Foreign Insurers.*—(a) In a
2 delinquency proceeding in a reciprocal state against an
3 insurer domiciled in that state, claimants against such
4 insurer who reside within this state may file claims
5 either with the ancillary receiver, if any, appointed in this
6 state, or with the domiciliary receiver. All such claims
7 must be filed on or before the last date fixed for the filing
8 of claims in the domiciliary delinquency proceedings.

9 (b) Controverted claims belonging to claimants resid-
10 ing in this state may either be proved in the domiciliary
11 state as provided by the law of that state, or if ancillary
12 proceedings have been commenced in this state, be proved
13 in those proceedings. In the event that any such claimant
14 elects to prove his claim in this state, he shall file his claim
15 with the ancillary receiver and shall give notice in writing
16 to the receiver in the domiciliary state, either by registered
17 mail or by personal service at least forty days prior to the
18 date set for hearing. The notice shall contain a concise
19 statement of the amount of the claim, the facts on which
20 the claim is based, and the priorities asserted, if any. If the
21 domiciliary receiver within thirty days after the giving
22 of such notice shall give notice in writing to the ancillary
23 receiver and to the claimant, either by registered mail or
24 by personal service, of his intention to contest such claim,
25 he shall be entitled to appear or to be represented in any
26 proceeding in this state involving adjudication of the
27 claim. The final allowance of the claim by the courts of

28 this state shall be accepted as conclusive as to its amount
29 and shall also be accepted as conclusive as to its priority,
30 if any, against special deposits or other security located
31 within this state.

Sec. 18. *Proof of Claims.*—(a) All claims against an
2 insurer against which delinquency proceedings have been
3 begun shall set forth in reasonable detail the amount of
4 the claim, or the basis upon which such amount can be
5 ascertained, the facts upon which the claim is based, and
6 the priorities asserted, if any. All such claims shall be
7 verified by the affidavit of the claimant, or someone au-
8 thorized to act on his behalf and having knowledge of
9 the facts, and shall be supported by such documents as
10 may be material thereto.

11 (b) all claims filed in this state shall be filed with the
12 receiver, whether domiciliary or ancillary, in this state,
13 on or before the last date for filing as specified in this
14 article.

15 (c) Within ten days of the receipt of any claim, or
16 within such further period as the court may, for good
17 cause shown, fix, the receiver shall report the claim to
18 the court, specifying in such report his recommendation
19 with respect to the action to be taken thereon. Upon
20 receipt of such report, the court shall fix a time for hear-
21 ing the claim and shall direct that the claimant or the
22 receiver, as the court shall specify, shall give such notice
23 as the court shall determine to such persons as shall
24 appear to the court to be interested therein. All such
25 notices shall specify the time and place of the hearing
26 and shall concisely state the amount and nature of the
27 claim, the priorities asserted, if any, and the recommenda-
28 tion of the receiver with reference thereto.

29 (d) At the hearing, all persons interested shall be en-
30 titled to appear and the court shall enter an order allow-
31 ing, allowing in part, or disallowing the claim. Any such
32 order shall be deemed to be an appealable order.

Sec. 19. *Priority of Certain Claims.*—(a) In a delin-
2 quency proceeding against an insurer domiciled in this
3 state, claims owing to residents of ancillary states shall

4 be preferred claims if like claims are preferred under
5 the laws of this state. All such claims owing to residents
6 or nonresidents shall be given equal priority of payment
7 from general assets regardless of where such assets are
8 located.

9 (b) In a delinquency proceeding against an insurer
10 domiciled in a reciprocal state, claims owing to residents
11 of this state shall be preferred if like claims are preferred
12 by the laws of that state.

13 (c) The owners of special deposit claims against an in-
14 surer for which a receiver is appointed in this or any
15 other state shall be given priority against their several
16 special deposits in accordance with the provisions of the
17 statutes governing the creation and maintenance of such
18 deposits. If there is a deficiency in any such deposit so
19 that the claims secured thereby are not fully discharged
20 therefrom, the claimants may share in the general assets,
21 but such sharing shall be deferred until general creditors,
22 and also claimants against other special deposits who
23 have received smaller percentages from their respective
24 special deposits, have been paid percentages of their
25 claims equal to the percentage paid from the special de-
26 posit.

27 (d) The owner of a secured claim against an insurer
28 for which a receiver has been appointed in this or any
29 other state may surrender his security and file his claim
30 as a general creditor, or the claim may be discharged
31 by resort to the security, in which case the deficiency, if
32 any, shall be treated as a claim against the general assets
33 of the insurer on the same basis as claims of unsecured
34 creditors. If the amount of the deficiency has been adju-
35 dicated in ancillary proceedings as provided in this ar-
36 ticle or if it has been adjudicated by a court of competent
37 jurisdiction in proceedings in which the domiciliary re-
38 ceiver has had notice and opportunity to be heard, such
39 amounts shall be conclusive; otherwise the amount shall
40 be determined in the delinquency proceeding in the domi-
41 ciliary state.

2 Sec. 20. *Attachment or Garnishment of Assets.*—Dur-
ing the pendency of delinquency proceedings in this or

3 any reciprocal state, no action or proceeding in the nature
4 of an attachment, garnishment or execution shall be com-
5 menced or maintained in the courts of this state against
6 the delinquent insurer or its assets. Any lien obtained
7 by any such action or proceeding within four months
8 prior to the commencement of any such delinquency pro-
9 ceeding or at any time thereafter shall be void as against
10 any rights arising in such delinquency proceeding.

Sec. 21. *Uniform Insurers Liquidation Act.*—(a) Para-
2 graphs (b) to (m), inclusive, of section one of this article,
3 together with sections three, four, and fourteen to twenty,
4 inclusive, of this article constitute and may be referred
5 to as the uniform insurers liquidation act.

6 (b) The uniform insurers liquidation act shall be so
7 interpreted and construed as to effectuate its general pur-
8 pose to make uniform the law of those states that enact
9 it. To the extent that its provisions when applicable con-
10 flict with other provisions of this article the provisions of
11 such act shall control.

Sec. 22. *Deposit of Monies Collected.*—The monies col-
2 lected by the commissioner in a proceeding under this
3 article shall be from time to time deposited in one or
4 more state or national banks, savings banks, or trust
5 companies, and in the case of the insolvency or voluntary
6 or involuntary liquidation of any such depository which
7 is an institution organized and supervised under the laws
8 of this state, such deposits shall be entitled to priority
9 of payment on an equality with any other priority given
10 by the banking laws of this state. The commissioner may
11 in his discretion deposit such monies or any part thereof
12 in a national bank or trust company as a trust fund.

Sec. 23. *Exemption From Fees.*—The commissioner shall
2 not be required to pay any fee to any public officer in
3 this state for filing, recording, issuing a transcript or cer-
4 tificate or authenticating any paper or instrument per-
5 taining to the exercise by the commissioner of any of
6 the powers or duties conferred upon him under this ar-
7 ticle, whether or not such paper or instrument be exe-
8 cuted by the commissioner or his deputies, employees or
9 attorneys of record and whether or not it is connected

10 with the commencement of any action or proceeding by
11 or against the commissioner, or with the subsequent con-
12 duct of such action or proceeding.

Sec. 24. *Borrowing on Pledge of Assets.*—For the pur-
2 pose of facilitating the rehabilitation, liquidation, con-
3 servation or dissolution of an insurer pursuant to this
4 article, the commissioner may, subject to the approval
5 of the court, borrow money and execute, acknowledge
6 and deliver notes or other evidences of indebtedness
7 therefor and secure the repayment of the same by the
8 mortgage, pledge, assignment, transfer in trust, or hy-
9 pothecation of any or all of the property, whether real,
10 personal or mixed, of such insurer, and the commissioner,
11 subject to the approval of the court, shall have power to
12 take any and all other action necessary and proper to
13 consummate any such loan and to provide for the repay-
14 ment thereof. The commissioner shall be under no obli-
15 gation personally or in his official capacity to repay any
16 loan made pursuant to this section.

Sec. 25. *Date Rights Fixed on Liquidation.*—The rights
2 and liabilities of the insurer and of its creditors, policy-
3 holders, stockholders, members, subscribers, and all other
4 persons interested in its estate shall, unless otherwise
5 directed by the court, be fixed as of the date on which
6 the order directing the liquidation of the insurer is en-
7 tered in the office of the clerk of the court which made
8 the order, subject to the provisions of this article with
9 respect to the rights of claimants holding contingent
10 claims.

Sec. 26. *Voidable Transfers.*—(a) Any transfer of, or
2 lien upon, the property of an insurer which is made or
3 created within four months prior to the granting of an
4 order to show cause under this article with the intent
5 of giving to any creditor or of enabling him to obtain a
6 greater percentage of his debt than any other creditor
7 of the same class and which is accepted by such creditor
8 having reasonable cause to believe that such preference
9 will occur, shall be voidable.

10 (b) Every director, officer, employee, stockholder,
11 member, subscriber, and any other person acting on be-

12 half of such insurer who shall be concerned in any such
13 act or deed and every person receiving thereby any
14 property of such insurer or the benefit thereof shall be
15 personally liable therefor and shall be bound to account
16 to the insurance commissioner.

17 (c) The insurance commissioner as a receiver in any
18 proceeding under this article may avoid any transfer of
19 or lien upon the property of an insurer which any creditor,
20 stockholder, subscriber or member of such insurer might
21 have avoided and may recover the property so trans-
22 ferred unless such person was a bona fide holder for value
23 prior to the date of the granting of an order to show
24 cause under this article. Such property or its value may
25 be recovered from anyone who has received it except a
26 bona fide holder for value as herein specified.

Sec. 27. *Priority of Claims for Compensation.*—(a)
2 Compensation actually owing to employees other than
3 officers of an insurer, for services rendered within three
4 months prior to the commencement of a proceeding
5 against the insurer under this article, but not exceeding
6 three hundred dollars for each such employee, shall be
7 paid prior to the payment of any other debt or claim,
8 and in the discretion of the commissioner may be paid
9 as soon as practicable after the proceeding has been com-
10 menced; except that at all times the commissioner shall
11 reserve such funds as will in his opinion be sufficient for
12 the expenses of administration.

13 (b) Such priority shall be in lieu of any other similar
14 priority which may be authorized by law as to wages or
15 compensation of such employees.

Sec. 28. *Offsets.*—(a) In all cases of mutual debts or
2 mutual credits between the insurer and another person
3 in connection with any action or proceeding under this
4 article, such credits and debts shall be set off and the
5 balance only shall be allowed or paid, except as provided
6 in subsection (b), below.

7 (b) No offset shall be allowed in favor of any such
8 person where (1) the obligation of the insurer to such
9 person would not at the date of the entry of any liquida-

10 tion order or otherwise, as provided in section twenty-
11 five of this article, entitle him to share as a claimant
12 in the assets of the insurer, or (2) the obligation of the
13 insurer to such person was purchased by or transferred
14 to such person with a view of its being used as an offset,
15 or (3) the obligation of such person is to pay an assess-
16 ment levied against the members of a mutual insurer, or
17 against the subscribers of a reciprocal insurer, or is to
18 pay a balance upon the subscription to the capital stock
19 of a stock insurer.

Sec. 29. *Allowance of Certain Claims.*—(a) No con-
2 tingent claim shall share in a distribution of the assets
3 of an insurer which has been adjudicated to be insolvent
4 by an order made pursuant to this article, except that
5 such claim shall be considered, if properly presented, and
6 may be allowed to share where:

7 (1) Such claim becomes absolute against the insurer
8 on or before the last day for filing proof of claims against
9 the assets of such insurer, or

10 (2) There is a surplus and the liquidation is thereafter
11 conducted upon the basis that such insurer is solvent.

12 (b) Where an insurer has been so adjudicated to be
13 insolvent any person who has a cause of action against
14 an insured of such insurer under a liability insurance
15 policy issued by such insurer shall have the right to file
16 a claim in the liquidation proceeding, regardless of the
17 fact that such claim may be contingent, and such claim
18 may be allowed:

19 (1) If it may be reasonably inferred from the proof
20 presented upon such claim that such person would be
21 able to obtain a judgment upon such cause of action
22 against such insured, and

23 (2) If such person shall furnish suitable proof, unless
24 the court for good cause shown shall otherwise direct,
25 that no further valid claim against such insurer arising
26 out of his cause of action other than those already pre-
27 sented can be made, and

28 (3) If the total liability of such insurer to all claimants
29 arising out of the same act of its insured shall be no

30 greater than its maximum liability would be were it not
31 in liquidation.

32 (c) No judgment against such an insured taken after
33 the date of entry of the liquidation order shall be con-
34 sidered in the liquidation proceedings as evidence of lia-
35 bility, or of the amount of damages, and no judgment
36 against an insured taken by default or by collusion prior
37 to the entry of the liquidation order shall be considered
38 as conclusive evidence in the liquidation proceedings,
39 either of the liability of such insured to such person upon
40 such cause of action or of the amount of damages to
41 which such person is therein entitled.

42 (d) No claim of any secured claimant shall be allowed
43 at a sum greater than the difference between the value of
44 the claim without security and the value of the security
45 itself as of the date of the entry of the order of liquidation
46 or such other date set by the court for determining rights
47 and liabilities as provided in section twenty-five of this
48 article unless the claimant shall surrender his security
49 to the commissioner, in which event the claim shall be
50 allowed in the full amount for which it is valued.

Sec. 30. *Time to File Claims.*—(a) If upon the granting
2 of an order of liquidation under this article or at any
3 time thereafter during the liquidation proceeding, the
4 insurer shall not be clearly solvent, the court shall, after
5 such notice and hearing as it deems proper, make an order
6 declaring the insurer to be insolvent. Thereupon regard-
7 less of any prior notice which may have been given to
8 creditors, the commissioner shall notify all persons who
9 may have claims against such insurer and who have not
10 filed proper proofs thereof to present the same to him,
11 at a place specified in such notice, within four months
12 from the date of entry of such order, or if the commis-
13 sioner shall certify that it is necessary, within such longer
14 time as the court shall prescribe. The last day for filing
15 of proofs of claims shall be specified in the notice, and
16 notice shall be given in a manner to be determined by
17 the court.

18 (b) Proofs of claim may be filed subsequent to the
19 date specified, but no such claim shall share in the dis-

20 tribution of the assets until all allowed claims, proofs of
21 which have been filed before said date, have been paid
22 in full with interest.

Sec. 31. *Report for Assessment Against Members of Sub-*
2 *scribers of Mutual or Reciprocal Insurers.*—Within three
3 years from the date an order of rehabilitation or liquida-
4 tion of a domestic mutual insurer or a domestic reciprocal
5 insurer was entered in the office of the clerk of the court
6 by which such order was made, the commissioner may
7 make a report to the court setting forth:

- 8 (a) the reasonable value of the assets of the insurer,
- 9 (b) The insurer's probable liabilities, and
- 10 (c) The probable necessary assessment, if any, to pay
11 all claims and expenses in full, including expenses of
12 administration.

Sec. 32. *Levy of Assessment.*—(a) Upon the basis of
2 the report provided for in section thirty-one of this ar-
3 ticle, including any amendments thereof, the court, ex
4 parte, may levy one or more assessments against all mem-
5 bers of such insurer who, as shown by the records of the
6 insurer, were members (if a mutual insurer) or sub-
7 scribers (if a reciprocal insurer) at any time within one
8 year prior to the date of issuance of the order to show
9 cause under section three of this article.

10 (b) Such assessment or assessments shall cover the
11 excess of the probable liabilities over the reasonable value
12 of the assets, together with estimated cost of collection
13 and percent of uncollectibility thereof. The total of all
14 assessments against any member or subscriber with re-
15 spect to any policy, whether levied pursuant to this ar-
16 ticle or pursuant to any other provision of this chapter,
17 shall be for no greater amount than that specified in the
18 policy or policies of the member or subscriber and as
19 limited under this chapter, except that if the court finds
20 that the policy was issued at a rate of premium below
21 the minimum rate lawfully permitted for the risk insured,
22 the court may determine the upper limit of such assess-
23 ment upon the basis of such minimum rate.

24 (c) No assessment shall be levied against any member

25 or subscriber with respect to any nonassessable policy
26 issued in accordance with this chapter.

Sec. 33. *Order to Pay Assessment.*—After levy of assess-
2 ment as provided in section thirty-two of this article, upon
3 the filing of a further detailed report by the commissioner
4 the court shall issue an order directing each member (if
5 a mutual insurer) or each subscriber (if a reciprocal
6 insurer), if he shall not pay the amount assessed against
7 him to the commissioner on or before a day to be specified
8 in the order, to show cause why he should not be held
9 liable to pay such assessment, together with costs as pro-
10 vided in section thirty-five of this article, and to show
11 cause why the commissioner should not have judgment
12 therefor.

Sec. 34. *Publication and Service of Assessment Order.*—
2 The commissioner shall cause a notice of such assessment
3 order, setting forth a brief summary of the contents of
4 such order, to be (a) published in such manner as shall
5 be directed by the court, and (b) enclosed in a sealed
6 envelope, addressed and mailed postage prepaid, to each
7 member or subscriber liable thereunder at his last known
8 address as it appears on the records of the insurer, at
9 least twenty days before the return day of the order to
10 show cause provided for in section thirty-three of this
11 article.

Sec. 35. *Judgment Upon the Assessment.*—(a) Upon
2 the return day of the order to show cause provided for
3 in section thirty-three of this article, if the member or
4 subscriber does not appear and serve duly verified objec-
5 tions upon the commissioner, the court shall make an
6 order adjudging that such member or subscriber is liable
7 for the amount of the assessment against him, together
8 with costs, and that the commissioner may have judgment
9 against the member or subscriber therefor.

10 (b) If, on such return day, the member or subscriber
11 shall appear and serve duly verified objections upon the
12 commissioner, there shall be a full hearing before the
13 court which, after such hearing, shall make such order
14 as the facts shall warrant.

15 (c) Any such order shall have the same force and
16 effect, shall be entered and docketed and may be ap-
17 pealed from, as if it were a judgment in an original ac-
18 tion brought in the court in which the proceeding is
19 pending.

Article 11. Unfair Practices and Frauds

Section

1. Declaration of purpose.
2. Unfair practices prohibited.
3. Misrepresentations and false advertising of policies.
4. False information and advertising generally.
5. Defamation.
6. Boycott, coercion and intimidation.
7. False financial statements.
8. Unfair discrimination.
9. Rebates on life or accident and sickness policies.
10. Exceptions to discrimination and rebate provisions for life and accident and sickness policies.
11. Rebates on insurance other than life and accident and sickness.
12. Inducements.
13. Interlocking ownership or management; multiple directorship.
14. Violations; cease and desist orders.
15. Undefined acts or practices.

Section 1. *Declaration of Purpose.*—The purpose of this
2 article is to regulate trade practice in the business of
3 insurance in accordance with the intent of Congress as
4 expressed in the act of Congress of March ninth, one
5 thousand nine hundred forty-five (Public Law fifteen,
6 seventy-ninth Congress), by defining, or providing for the
7 determination of, all such practices in this state which
8 constitute unfair methods of competition or unfair or
9 deceptive acts or practices and by prohibiting the trade
10 practices so defined or determined.

Sec. 2. *Unfair Practices Prohibited.*—No person shall
2 engage in this state in any trade practice which is de-
3 fined in this article as, or determined pursuant to this
4 article to be, an unfair method of competition or unfair
5 or deceptive act or practice in the business of insurance.

Sec. 3. *Misrepresentations and False Advertising of
2 Policies.*—No person shall make, issue, circulate, or cause
3 to be made, issued or circulated, any estimate, illustra-
4 tion, circular or statement misrepresenting the terms of
5 any policy issued or to be issued or the benefits or ad-
6 vantages promised thereby or the dividends or share of

7 the surplus to be received thereon, or make any false or
8 misleading statement as to the dividends or share of sur-
9 plus previously paid on similar policies, or make any mis-
10 leading representation or any misrepresentation as to the
11 financial condition of any insurer, or as to the legal reserve
12 system upon which any life insurer operates, or use any
13 name or title of any policy or class of policies misrep-
14 resenting the true nature thereof, or make any misrep-
15 resentation to any policyholder insured in any company
16 for the purpose of inducing or tending to induce such
17 policyholder to lapse, forfeit, or surrender his insurance.

Sec. 4. *False Information and Advertising Generally.*—

2 No person shall make, publish, disseminate, circulate, or
3 place before the public or cause, directly or indirectly, to
4 be made, published, disseminated, circulated or placed
5 before the public, in a newspaper, magazine or other pub-
6 lication, or in the form of a notice, circular, pamphlet,
7 letter or poster, or over any radio or television station;
8 or in any other way, an advertisement, announcement
9 or statement containing any assertion, representation or
10 statement with respect to the business of insurance or
11 with respect to any person in the conduct of his insurance
12 business, which is untrue, deceptive or misleading.

Sec. 5. *Defamation.*—No person shall make, publish,
2 disseminate or circulate, directly or indirectly, or aid,
3 abet or encourage the making, publishing, disseminating
4 or circulating of any oral or written statement or any
5 pamphlet, circular, article or literature which is false or
6 maliciously critical of or derogatory to the financial con-
7 dition of an insurer and which is calculated to injure any
8 person engaged in the business of insurance.

Sec. 6. *Boycott, Coercion and Intimidation.*—(a) No
2 person shall enter into any agreement to commit, or by
3 any concerted action commit, any act of boycott, coercion
4 or intimidation resulting in or tending to result in un-
5 reasonable restraint of, or monopoly in, the business of
6 insurance.

7 (b) No person engaged in the business of financing the
8 purchase of real or personal property or of lending money

9 on the security of real or personal property, nor any agent,
10 servant or employee of such person, shall directly or in-
11 directly impose or require as a condition of any such
12 financing or loaning of money, whether the financing or
13 the security to be taken shall be in the form of a mortgage,
14 deed of trust, contract, pledge or otherwise, or as a con-
15 dition to the renewal or extension of any such loan or
16 financing or to the performance of any other act in con-
17 nection therewith, that the purchaser or borrower, or his
18 successors, shall negotiate for or procure any policy of
19 insurance or renewal thereof covering the property in-
20 volved in the transaction from or through a particular
21 insurer, agent, solicitor, broker or other person; but the
22 foregoing shall not be deemed to prevent such lender
23 from reasonably exercising the right to approve or dis-
24 approve the sufficiency of any policy or renewal thereof
25 or insurer issuing same tendered in connection with such
26 transaction by the person seeking or obtaining such financ-
27 ing or loan.

Sec. 7. *False Financial Statements.*—(a) No person shall
2 file with any supervisory or other public official, or make,
3 publish, disseminate, circulate or deliver to any person,
4 or place before the public, or cause directly or indirectly,
5 to be made, published, disseminated, circulated, delivered
6 to any person or placed before the public, any false state-
7 ment of financial condition of an insurer with intent to
8 deceive.

9 (b) No person shall make any false entry in any book,
10 report or statement of any insurer with intent to deceive
11 any agent or examiner lawfully appointed to examine
12 into its condition or into any of its affairs, or any public
13 official to whom such insurer is required by law to report,
14 or who has authority by law to examine into its condition
15 or into any of its affairs or, with like intent, wilfully omit
16 to make a true entry of any material fact pertaining to
17 the business of such insurer in any book, report or state-
18 ment of such insurer.

Sec. 8. *Unfair Discrimination.*—(a) No person shall
2 make or permit any unfair discrimination between indi-
3 viduals of the same class and equal expectation of life in

4 the rates charged for any contract of life insurance or
5 of life annuity or in the dividends or other benefits pay-
6 able thereon, or in any other of the terms and conditions
7 of such contract.

8 (b) No person shall make or permit any unfair dis-
9 crimination between individuals of the same class and
10 of essentially the same hazard in the amount of premium,
11 policy fees, or rates charged for any policy or contract
12 of accident and sickness insurance or in the benefits pay-
13 able thereunder, or in any of the terms or conditions of
14 such contract, or in any other manner whatever.

15 (c) As to kinds of insurance other than life and acci-
16 dent and sickness, no person shall make or permit any
17 unfair discrimination in favor of particular persons, or
18 between insureds or subjects of insurance having sub-
19 stantially like insuring, risk, and exposure factors, or
20 expense elements, in the terms or conditions of any in-
21 surance contract, or in the rate or amount of premium
22 charged therefor. This subsection shall not apply as to
23 any premium or premium rate in effect pursuant to ar-
24 ticle twenty of this chapter (rate laws).

Sec. 9. *Rebates on Life or Accident and Sickness Poli-
2 cies.*—Except as otherwise expressly provided by law,
3 no person shall knowingly permit or offer to make or
4 make any contract of life insurance, life annuity, or ac-
5 cident and sickness insurance, or agreement as to such
6 contract other than as plainly expressed in the contract
7 issued thereon, or pay or allow, or give or offer to pay,
8 allow, or give, directly or indirectly, as an inducement
9 to such insurance or annuity, any rebate of premiums
10 payable on the contract, or any special favor or advan-
11 tage in the dividends or other benefits thereon, or any
12 valuable consideration or inducement whatever not speci-
13 fied in the contract.

Sec. 10. *Exceptions to Discrimination and Rebate Pro-
2 visions for Life and Accident and Sickness Policies.*—
3 Nothing in sections eight or nine of this article shall be
4 construed as including within the definition of discrimi-
5 nation or rebates any of the following practices:

6 (a) In the case of any contract of life insurance or life
7 annuity, paying bonuses to policyholders or otherwise
8 abating their premiums in whole or part out of surplus
9 accumulated from nonparticipating insurance: *Provided*,
10 That any such bonuses or abatement of premiums shall
11 be fair and equitable to policyholders and for the best
12 interests of the insurer and its policyholders.

13 (b) In the case of life insurance policies issued on the
14 debit plan, making allowance to policyholders who have
15 continuously for a specified period made premium pay-
16 ments directly to an office of the insurer in an amount
17 which fairly represents the saving in collection expense.

18 (c) Readjustment of the rate of premium for a group
19 insurance policy based on the loss or expense experience
20 thereunder, at the end of the first or any subsequent policy
21 year of insurance thereunder, which may be made retro-
22 active only for such policy year.

23 (d) Issuing life or accident and sickness policies on a
24 salary savings or payroll deduction plan at a reduced rate
25 commensurate with the savings made by the use of such
26 plan.

Sec. 11. *Rebates on Insurance Other Than Life and*
2 *Accident and Sickness.*—No insurer or employee, agent
3 or representative thereof, or broker shall knowingly
4 charge, demand or receive a premium for any policy of
5 insurance, other than life or accident and sickness in-
6 surance and ocean marine and marine protection and in-
7 demnity insurance, except in accordance with an appli-
8 cable filing on file with the commissioner. No such insurer,
9 employee, agent, representative, or broker shall pay, allow
10 or give, directly or indirectly, as an inducement to insur-
11 ance, or after insurance has been effected, any rebate, dis-
12 count, abatement, credit or reduction of the premium
13 named in a policy of insurance, or any special favor or
14 advantage in the dividends or other benefits to accrue
15 thereon, or any valuable consideration or inducement
16 whatever, not specified in the policy of insurance, except
17 to the extent provided for in an applicable filing. No
18 insured named in a policy of insurance, nor any relative,
19 representative or employee of such insured shall know-

20 ingly receive or accept directly or indirectly, any such re-
21 bate, discount, abatement, credit or reduction of premium,
22 or any such special favor or advantage or valuable consid-
23 eration or inducement. Nothing in this section shall be
24 construed as prohibiting the payment of commissions or
25 other compensation to duly licensed agents and brokers,
26 nor as prohibiting any insurer from allowing or returning
27 to its participating policyholders, members, or subscrib-
28 ers, dividends, savings, or unabsorbed premium deposits.
29 As used in this section the word "insurance" includes
30 suretyship and the word "policy" includes bond.

Sec. 12. *Inducements.*—No insurer, agent, broker, solici-
2 tor, or other person shall, as an inducement to insurance,
3 directly or indirectly, offer, sell, buy, or offer or promise
4 to buy, sell, give, promise, or allow to the insured or
5 prospective insured or to any other person in his behalf
6 in any manner whatsoever:

7 (a) Any employment.

8 (b) Any shares of stock or other securities issued or
9 at any time to be issued or any interest therein or rights
10 thereto.

11 (c) Any advisory board contract, or any similar con-
12 tract, agreement or understanding, offering, providing
13 for, or promising any special profits.

14 (d) Any prizes, goods, wares, merchandise, or tangible
15 property.

16 (e) Any loans except those made solely for the pur-
17 pose of paying policy premiums, or policy loans pursuant
18 to section nineteen of article eight of this chapter.

Sec. 13. *Interlocking Ownership or Management; Mul-*
2 *tiple Directorship.*—(a) Any insurer may retain, invest
3 in or acquire the whole or any part of the capital stock
4 of any other insurer or insurers, or have a common man-
5 agement with any other insurer or insurers, unless such
6 retention, investment, acquisition or common management
7 is inconsistent with any other provision of this chapter,
8 or unless by reason thereof the business of such insurers
9 with the public is conducted in a manner which substan-

10 tially lessens competition generally in the insurance busi-
11 ness or tends to create a monopoly therein.

12 (b) Any person otherwise qualified may be a director
13 of two or more insurers which are competitors, unless
14 the effect thereof is to substantially lessen competition
15 between insurers generally or tends to create a monopoly.

Sec. 14. *Violations; Cease and Desist Orders.*—If, after
2 notice and hearing, the commissioner determines that
3 any person has engaged in or is engaging in any method
4 of competition, act or practices in violation of the pro-
5 visions of this article or any rules or regulations promul-
6 gated by the commissioner thereunder, the commissioner
7 shall issue an order directing such person to cease and
8 desist from engaging in such method of competition, act
9 or practice. No order of the commissioner pursuant to
10 this section or order of court to enforce it, or holding of a
11 hearing, shall in any manner relieve or absolve any per-
12 son affected by such order or hearing from any other lia-
13 bility, penalty or forfeiture under law.

Sec. 15. *Undefined Acts or Practices.*—If, after notice
2 and hearing, the commissioner determines that any per-
3 son transacting insurance is engaging in this state in any
4 method of competition or act or practice in the transac-
5 tion of such insurance which is not defined in this article,
6 and that such method of competition is unfair or such act
7 or practice is unfair or deceptive, the commissioner shall
8 issue an order directing such person to cease and desist
9 from engaging in such method of competition, act or
10 practice.

Article 12. Agents, Brokers, Solicitors and Excess Line

Section

1. License required.
2. General qualifications.
3. Application.
4. Broker's requirements and restrictions.
5. Issuance of license.
6. Fees.
7. Countersignature.
8. Nonresident life and accident and sickness agents.
9. Agent resident in contiguous municipalities.
10. Excess lines.
11. Excess line broker's affidavit and report.
12. Excess line insurance valid.
13. Licensing of excess line brokers.

14. May accept business from agents.
15. Records of excess line brokers.
16. Annual return of and tax on excess line brokers.
17. Service of process on excess line insurers and brokers.
18. Term of licenses.
19. Agent to deal only with licensed insurer, broker or solicitor.
20. Solicitor to act only through appointing agent.
21. Personal liability of agent or broker.
22. Solvent insurer required.
23. Person soliciting insurance is agent of insurer.
24. Payment of commissions.
25. Revocation, suspension or refusal to renew license; fine in lieu thereof.
26. Insurance vending machines.
27. Payment of commission under an assigned risk plan.

Section 1. *License Required.*—(a) No person shall in
2 West Virginia act as or hold himself out to be an agent,
3 broker or solicitor nor shall any person in any manner
4 solicit, negotiate, make or procure insurance covering
5 subjects of insurance resident, located or to be performed
6 in West Virginia, unless then licensed therefor pursuant
7 to this article.

8 (b) No agent, broker or solicitor or any representative
9 or employee thereof shall solicit or take application for,
10 negotiate, procure or place for others any kind of insur-
11 ance for which he is not then licensed.

12 (c) No insurer shall accept any business from any agent
13 who does not then hold an appointment as agent for such
14 insurer pursuant to this article.

Sec. 2. *General Qualifications.*—For the protection of
2 the people of West Virginia, the commissioner shall not
3 issue, renew or permit to exist any agent's, broker's or
4 solicitor's license except to an individual who:

5 (a) Is twenty-one years of age or more, except that
6 present licensees who otherwise qualify may secure re-
7 newal even though they be less than twenty-one.

8 (b) Is a resident of West Virginia, except that a broker's
9 license shall be issued only to nonresidents, and except
10 for nonresident life and accident and sickness agents as
11 provided in section eight of this article.

12 (c) Is, in the case of an agent applicant, appointed as
13 agent by a licensed insurer for the kind or kinds of insur-
14 ance for which application is made, subject to issuance of
15 license, or, in the case of a solicitor applicant, appointed as

16 solicitor by a licensed resident agent, subject to issuance,
17 of license.

18 (d) Does not intend to use the license principally for
19 the purpose, in the case of life or accident and sickness
20 insurance, of procuring insurance on himself, members of
21 his family or his relatives; or, as to insurance other than
22 life and accident and sickness, upon his property or in-
23 surable interests or those of his family or his relatives or
24 those of his employer, employees, or firm, or corporation
25 in which he owns a substantial interest, or of the em-
26 ployees of such firm or corporation, or on property or
27 insurable interests for which the applicant or any such
28 relative, employer, firm or corporation is the trustee, bailee
29 or receiver. For the purposes of this provision, a vendor's
30 or lender's interest in property sold or being sold under
31 contract or which is the security for any loan, shall not
32 be deemed to constitute property or an insurable interest
33 of such vendor or lender.

34 (e) Satisfies the commissioner that he is trustworthy
35 and competent.

Sec. 3. *Application.*—(a) Application for an agent's,
2 broker's or solicitor's license or renewal thereof shall be
3 made to the commissioner upon a form prescribed by him
4 and shall contain such information and be accompanied
5 by such supporting documents as the commissioner may
6 require, and the commissioner may require such applica-
7 tion to be made under the applicant's oath.

8 (b) If for an agent's license, the application shall show
9 the kinds of insurance to be transacted, and shall be ac-
10 companied by the written appointment of the applicant as
11 agent by at least one licensed insurer for each kind of
12 insurance for which application is made.

13 (c) If for a solicitor's license, the application shall be
14 accompanied by written appointment of the applicant as
15 solicitor by a licensed agent.

16 (d) If for a broker's license, the application shall be
17 accompanied by a statement upon a form prescribed by the
18 commissioner as to the trustworthiness and competency
19 of the applicant, signed by at least three licensed resident
20 agents of this state.

21 (e) Wilful misrepresentation of any fact in any such
22 application or any documents in support thereof is a
23 violation of this chapter.

Sec. 4. *Broker's Requirements and Restrictions.*—(a)
2 Broker's licenses shall be issued only to non-residents as
3 provided in section two of this article and only to such
4 applicants as are licensed agents or brokers in a state
5 other than West Virginia and furnish to the commissioner
6 satisfactory proof thereof.

7 (b) No license shall be issued to any such broker unless
8 he shall file with the commissioner a power of attorney
9 appointing the auditor of this state and his successors in
10 office the agent of such broker for the service of process
11 in any suit or proceeding arising in this state out of or in
12 connection with the exercise of such license, and such
13 service of process shall be of the same legal force and
14 validity as personal service of process in this state upon
15 such broker.

16 (c) No such license shall be issued to any person who
17 is an employer, employee or partner of a licensed agent
18 of this state, nor shall such license be issued to any person
19 who is a salaried employee of any insurer.

20 (d) No such broker shall solicit, negotiate, make or
21 procure within this state, or aid in any manner in solicit-
22 ing, negotiating, making or procuring within this state,
23 any insurance contracts covering subjects of insurance
24 resident, located, or to be performed in this state, either
25 on account of any person desiring to procure insurance
26 or on account of any insurer.

27 (e) A licensed broker lawfully soliciting, negotiating,
28 making or procuring outside this state, or aiding in solicit-
29 ing, negotiating, making or procuring outside this state,
30 insurance contracts covering subjects of insurance resi-
31 dent, located, or to be performed in this state, shall place
32 all such contracts only with licensed resident agents of
33 this state for insurers licensed in this state.

Sec. 5. *Issuance of License.*—The commissioner may
2 issue a license to any individual as agent, broker or solici-
3 tor who complies with the applicable provisions of this

4 chapter and who in the opinion of the commissioner is
5 trustworthy and competent.

Sec. 6. *Fees.*—The fee for an agent's license shall be
2 five dollars as provided in section thirteen of article three
3 of this chapter, the fee for a solicitor's license shall be five
4 dollars, and the fee for a broker's license shall be ten
5 dollars, except that when any other state imposes a tax,
6 bond, fine, penalty, license fee or other obligation or pro-
7 hibition on agents resident in this state, the same tax,
8 bond, fine, penalty, license fee or other obligation or pro-
9 hibition shall be imposed upon agents (where licensing
10 of non-resident agents is permitted under this article) or
11 brokers of such other state licensed or seeking a license
12 in this state. All fees and monies so collected shall be
13 deposited in the fund for the purposes set forth in section
14 thirteen of article three of this chapter.

Sec. 7. *Countersignature.*—No contract of insurance
2 covering a subject of insurance, resident, located, or to be
3 performed in this state, shall be executed, issued or de-
4 livered by any insurer unless the contract, or in the case
5 of an interstate risk a countersignature endorsement carry-
6 ing full information as to the West Virginia risk, is signed
7 or countersigned in writing by a licensed resident agent
8 of the insurer, except that excess line insurance shall be
9 countersigned by a duly licensed excess line broker. This
10 section does not apply to: reinsurance; credit insurance;
11 any contract of insurance covering the rolling stock of any
12 railroad or covering any vessel, aircraft or motor carrier
13 used in interstate or foreign commerce, or covering any
14 liability or other risks incident to the ownership, mainte-
15 nance or operation thereof; any contract of insurance cov-
16 ering any property in interstate or foreign commerce, or
17 any liability or risks incident thereto. Countersignature
18 of a duly licensed resident agent of the company originat-
19 ing a contract of insurance participated in by other com-
20 panies as co-sureties or co-indemnitors shall satisfy all
21 countersignature requirements in respect to such contract
22 of insurance.

Sec. 8. *Nonresident Life and Accident and Sickness*

2 *Agents.*—(a) Nonresidents otherwise complying with the
3 provisions of this chapter may be licensed as a life agent
4 but all policies issued as a result of solicitation on the part
5 of such nonresident in this state shall be reported, placed,
6 countersigned, and consummated by and through a duly
7 licensed resident agent of the issuing insurer.

8 (b) Individuals otherwise complying with the pro-
9 visions of this chapter, who are residents of a county in
10 another state adjoining a county in this state, and a
11 licensed accident and sickness agent of such state, may be
12 licensed as a nonresident accident and sickness agent in
13 this state, if the state of residence of such nonresident
14 has established, by law or regulation, like requirements
15 for licensing of residents of counties in this state adjoin-
16 ing a county in such state as nonresident accident and
17 sickness agents. All policies issued as a result of sollicita-
18 tion by such nonresident accident and sickness agents
19 shall be reported, placed, countersigned and consummated
20 by and through a duly licensed resident agent of the
21 - issuing insurer.

Sec. 9. Agent Resident in Contiguous Municipalities.—

2 An agent who has his residence in an urban community
3 composed of two immediately contiguous municipal corp-
4 orations not separated by a river or other stream, one of
5 which is located in this state and the other located in
6 another state, shall be considered a resident of this state
7 for the purposes of this article if his residence is in any
8 part of such urban community and the state wherein the
9 other municipal corporation is located has established by
10 law or regulation like requirements as to residence of
11 agents in such urban community.

Sec. 10. Excess Lines.—Any portion or all of an insur-
2 ance coverage against loss or damage to property or person
3 from any cause which cannot be procured from licensed
4 insurers, which coverages are hereinafter designated as
5 “excess line”, may be procured from unlicensed insurers
6 subject to the following conditions:

7 (a) The insurance must be procured only through a
8 licensed excess line broker.

9 (b) The insurance coverage must not be procurable,
10 after diligent effort has been made to do so, from licensed
11 insurers authorized to transact that kind of insurance in
12 this state, or has been procured to the full extent such
13 insurers are willing to insure, and the placing of insurance
14 with an unlicensed insurer must not be for the purpose of
15 securing advantages either as to premium rate or terms of
16 the insurance contract.

Sec. 11. *Excess Line Broker's Affidavit and Report.*—

2 At the time of procuring any excess line insurance, the
3 excess line broker shall execute and file with the com-
4 missioner his report thereof in duplicate and under oath,
5 setting forth facts from which it may be determined
6 whether the requirements of section ten of this article
7 have been met, and in addition thereto the following:

- 8 (a) Name and address of the insurer.
- 9 (b) Number of the policy issued.
- 10 (c) Name and address of the insured.
- 11 (d) Nature and amount of liability assumed by the
12 insurer.
- 13 (e) Premium, and premium rate if applicable.
- 14 (f) Other information reasonably required by the com-
15 missioner.

Sec. 12. *Excess Line Insurance Valid.*—Insurance con-
2 tracts procured as excess line coverage from unlicensed
3 insurers in accordance with this article shall be fully valid
4 and enforceable as to all parties, and shall be given recog-
5 nition in all matters and respects to the same effect as like
6 contracts issued by licensed insurers.

Sec. 13. *Licensing of Excess Line Brokers.*—(a) Any
2 licensed insurance agent deemed by the commissioner to
3 be competent and trustworthy for the purpose, may be
4 licensed as an excess line broker.

5 (b) The license fee shall be fifty dollars, all fees so col-
6 lected to be deposited in the fund for the purposes set
7 forth in section thirteen of article three of this chapter.

8 (c) Prior to issuance of the license, the applicant there-
9 for shall file with the commissioner and thereafter main-

10 tain in force for so long as the license or any renewal
11 thereof remains in effect, a bond in favor of the state of
12 West Virginia in the penal sum of two thousand dollars.
13 with an authorized corporate surety approved by the com-
14 missioner, conditioned that he will conduct business un-
15 der the license in accordance with this article, that he will
16 promptly remit the taxes provided by section sixteen of
17 this article, and that he will properly account to the person
18 entitled thereto for funds received by him through trans-
19 actions under the license. No such bond shall be termi-
20 nated unless at least thirty-days' prior written notice
21 thereof is filed with the commissioner.

2 *Sec. 14. May Accept Business from Agents.*—A licensed
3 excess line broker may accept and place authorized excess
4 line business from any insurance agent or broker licensed
5 in this state for the kind of insurance involved, and may
6 compensate such agent or broker therefor. The excess
7 line broker shall have the right to receive from the insurer
8 the customary commission.

2 *Sec. 15. Records of Excess Line Brokers.*—Each excess
3 line broker shall keep in his office a full and true record of
4 each excess line contract procured by him, and such
5 record may be examined at any time thereafter by the
6 commissioner. The record shall include such of the follow-
7 ing items as are applicable:

- 7 (a) Name and address of the insurer,
- 8 (b) Name and address of the insured,
- 9 (c) Amount of insurance,
- 10 (d) Gross premium charged,
- 11 (e) Return premium paid, if any,
- 12 (f) Rate of premium charged on the several items of
13 coverage,
- 14 (g) Effective date of the contract and the terms thereof,
15 and
- 16 (h) Brief general description of the risks insured
17 against and the property insured.

2 *Sec. 16. Annual Return of and Tax on Excess Line-
3 Brokers.*—Every excess line broker licensed pursuant to

3 the provisions of this article shall make a return annually,
4 under oath, on or before the first day of March to the com-
5 missioner of the gross amount of premiums charged the
6 insureds by the insurers for insurance procured by such
7 licensee, pursuant to such license during the previous
8 calendar year, together with the amount of tax due there-
9 on. The annual tax required to be paid, under the pro-
10 visions of this section, shall be a sum equal to two percent
11 of the gross premiums received on the gross business pro-
12 cured by such licensee on subjects of insurance, resident,
13 located or to be performed in this state and obtained
14 pursuant to the provisions of this article, including any
15 so-called dividends on participating insurance policies
16 applied in reduction of premiums, less premiums return-
17 able for cancellation. All such taxes paid to the commis-
18 sioner shall be paid by him into the state treasury for the
19 benefit of the state fund.

Sec. 17. *Service of Process on Excess Line Insurers and*
2 *Brokers.*—As to every unlicensed insurer issuing or de-
3 livering an excess line policy through an excess line
4 broker in this state, the state auditor of West Virginia
5 shall be, and is hereby constituted the attorney-in-fact of
6 each such insurer and broker for service of process in the
7 same manner as for licensed insurers as provided in sec-
8 tion twelve of article four of this chapter.

Sec. 18. *Term of Licenses.*—All licenses of agents, solici-
2 tors, brokers and excess line brokers shall expire at mid-
3 night on the March thirty-first next following the date of
4 issuance. The commissioner shall renew annually the
5 license of all such licensees who qualify and make appli-
6 cation therefor.

Sec. 19. *Agent to Deal Only With Licensed Insurer,*
2 *Broker or Solicitor.*—(a) No agent shall accept any risk,
3 place any insurance or issue any policy except with an
4 insurer licensed in this state and for which insurer such
5 agent has been appointed and licensed.

6 (b) No agent shall accept any contract of insurance
7 from any broker not licensed in this state.

8 (c) No agent shall employ or accept the services of any

9 solicitor not duly appointed and licensed as solicitor for
10 such agent.

Sec. 20. *Solicitor to Act Only Through Appointing Agent.*—A solicitor shall solicit and receive applications for insurance only for the duly licensed agent who appointed such solicitor, and shall report all business through such agent. The expiration, cancellation, suspension or revocation of the license of the appointing agent shall automatically expire, cancel, suspend or revoke the solicitor's license in like manner, and the appointing agent may cancel a solicitor's license at any time by written request to the commissioner. No agent may apply for licenses for more than two solicitors. No solicitors shall be permitted for life insurance agents.

Sec. 21. *Personal Liability of Agent or Broker.*—Any agent or broker who participates directly or indirectly in effecting any insurance contract, except authorized reinsurance, upon any subject of insurance resident, located or to be performed in this state, where the insurer is not licensed to transact insurance in this state, shall be personally liable upon such contract as though such agent or broker were the insurer thereof. This section shall not apply to excess line insurance procured in the manner provided in sections ten to seventeen, inclusive, of this article, nor to ocean marine insurance or marine protection and indemnity insurance.

Sec. 22. *Solvent Insurer Required.*—No agent, broker or excess line broker shall knowingly place any coverage in an insolvent insurer.

Sec. 23. *Person Soliciting Insurance is Agent of Insurer.*—Any person who shall solicit within this state an application for insurance shall, in any controversy between the insured or his beneficiary and the insurer issuing any policy upon such application, be regarded as the agent of such insurer and not the agent of the insured.

Sec. 24. *Payment of Commissions.*—(a) The entire commission payable by any insurer licensed to transact insurance in this state on any insurance policy shall be paid directly to the licensed resident agent who counter-

5 signs the policy. The countersigning agent shall not pay
6 any part of such commission to any person other than a
7 licensed agent or broker: *Provided*, That the portion of
8 such commission paid to any licensed broker or brokers
9 shall not exceed ten percent of the gross policy premium
10 or fifty percent of the commission payable by the insurer
11 as provided herein, whichever is the lesser amount. The
12 term "commission" as used herein shall include engineer-
13 ing fees, service fees or any other compensation incident
14 to the issuance of a policy payable by or to any insurer,
15 agent or broker. It shall be unlawful for any insurer or
16 agent to pay, and any person to accept, directly or indi-
17 rectly, any commission except as provided in this section.

18 (b) This section shall not apply to reinsurance, accident
19 and sickness insurance, or life insurance; nor to excess line
20 insurance procured in accordance with the provisions of
21 this article relating thereto; nor to credit insurance, any
22 contract of insurance covering the rolling stock of any
23 railroad or covering any vessel, aircraft or motor carrier
24 used in interstate or foreign commerce, any liability or
25 other risks incident to the ownership, maintenance or op-
26 eration thereof, any contract of insurance covering any
27 property in interstate or foreign commerce, or any lia-
28 bility or risks incident thereto.

Sec. 25. *Revocation, Suspension or Refusal to Renew
2 License; Fine in Lieu Thereof.*—Whenever, after notice
3 and hearing, the commissioner is satisfied that any agent,
4 solicitor, broker or excess line broker has violated any
5 provision of this chapter, or is incompetent or untrust-
6 worthy, he shall revoke, suspend, or, if renewal of license
7 is pending, refuse to renew the license of such agent,
8 solicitor, broker or excess line broker. In lieu of revoking,
9 suspending or refusing to renew such license, the com-
10 missioner may in his discretion order such licensee to pay
11 to the state of West Virginia a penalty in a sum not to
12 exceed one hundred dollars and upon the failure of such
13 licensee to pay such penalty by delivery of such sum to
14 the commissioner within thirty days of notice thereof, the
15 commissioner shall revoke, suspend or refuse to renew
16 such license.

2 Sec. 26. *Insurance Vending Machines.*—(a) A licensed
3 resident agent may solicit applications for and issue poli-
4 cies for trip accident insurance by means of mechanical
5 vending machines supervised by him, if:

6 (1) The commissioner finds that the kind of insurance
7 and form of policy to be so sold is reasonably suited for
8 sale and issuance through vending machines and other-
9 wise complies with this chapter, and that use of such
10 machines therefor would be of convenience to the public,
11 and

12 (2) The commissioner finds that the type of vending
13 machines to be used is reasonably suitable and practical
14 for the purpose.

15 (b) The commissioner shall issue to the agent a special
16 vending machine license as to each such machine to be
17 used. The license shall specify name and address of the
18 insurer and agent, kind of insurance and type of policy
19 to be sold, and the place where the machine is to be in
20 operation. The license shall expire, be renewable, and be
21 suspended or revoked, coincidentally with that of the
22 agent. The license fee shall be five dollars for each year
23 or part thereof for each vending machine. Proof of exist-
24 ence of the license shall be displayed on or about each
25 such machine in such manner as the commissioner may
26 reasonably require. Fees so collected are subject to the
27 provisions of section thirteen of article three of this
chapter.

2 Sec. 27. *Payment of Commission Under an Assigned*
3 *Risk Plan.*—An insurer participating in a plan for assign-
4 ment of personal injury liability insurance or property
5 damage liability insurance on owner's automobiles or
6 operators, which plan has been approved by the com-
7 missioner, may pay a commission to a qualified agent who
8 is licensed to act as agent for any insurer participating in
9 such plan when such agent is designated by the insured as
10 the producer of record under an automobile assigned risk
11 plan pursuant to which a policy is issued under such plan,
12 and sections seven and twenty-four of this article shall
not be applicable thereto.

Article 13. Life Insurance**Section**

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5. Entire contract.
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40. Same—beneficiary and facility of payment clause.
41. Same—direct payment of premiums.
42. Same—conversion of weekly policies.
43. Same—conversion of monthly policies.
44. Same—title of policies.
45. Same—application of provisions to term or specified insurance.
46. Same—prohibited provisions in policies.
47. Burial insurance.

Section 1. Scope of Article.—This article applies to life insurance (including annuities), other than reinsurance and group life insurance (including group annuities); except that sections sixteen (contestability as to excluded or restricted coverage), twenty-five (limitation of liability), twenty-six (incontestability after reinstatement), twenty-nine (dual pay policies), thirty (standard non-

8 forfeiture law) and sections thirty-one to forty-six, inclu-
9 sive (which specifically relate only to industrial life insur-
10 ance), shall be the only sections of this article which apply
11 to industrial life insurance.

Sec. 2. *Standard Provisions Required.*—(a) No policy
2 of life insurance other than industrial, group, and pure
3 endowments with or without return of premiums or of
4 premiums and interest, shall be delivered or issued for
5 delivery in West Virginia unless it contains in substance
6 all of the provisions required by sections three to fifteen,
7 inclusive, of this article. This section shall not apply to
8 annuity contracts nor to any provision of a life insurance
9 policy or contract supplemental thereto relating to disa-
10 bility benefits or to additional benefits in the event of
11 death by accident or accidental means.

12 (b) Any of such provisions or portions thereof not
13 applicable to single premium or term policies shall to that
14 extent not be incorporated therein.

Sec. 3. *Grace Period.*—There shall be a provision that a
2 grace period of thirty-one days shall be allowed within
3 which the payment of any premium after the first may
4 be made, during which period of grace the policy shall
5 continue in full force; but if a claim arises under the
6 policy during such period of grace before the overdue
7 premium is paid the amount of such premium may be
8 deducted from the policy proceeds.

Sec. 4. *Incontestability.*—There shall be a provision
2 that the policy (exclusive of provisions relating to disa-
3 bility benefits or to additional benefits in the event of
4 death by accident or accidental means) shall be incon-
5 testable, except for nonpayment of premiums, after it
6 has been in force during the lifetime of the insured for a
7 period of two years from its date of issue.

Sec. 5. *Entire Contract.*—There shall be a provision that
2 the policy, or the policy and the application therefor if
3 a copy of such application is endorsed upon or attached
4 to the policy when issued, shall constitute the entire con-
5 tract between the parties, and that all statements con-

6 tained in the application shall, in the absence of fraud, be
7 deemed representations and not warranties.

Sec. 6. *Misstatement of Age.*—There shall be a provision
2 that if the age of the insured or of any other person whose
3 age is considered in determining the premium has been
4 misstated, any amount payable or benefit accruing under
5 the policy shall be such as the premium would have pur-
6 chased at the correct age or ages.

Sec. 7. *Dividends.*—There shall be a provision in partic-
2 pating policies that, beginning not later than the end of
3 the third policy year, the insurer shall annually ascertain
4 and apportion the divisible surplus, if any, that will
5 accrue on the policy anniversary or other dividend date
6 specified in the policy provided the policy is in force and
7 all premiums to that date are paid. Except as hereinafter
8 provided, any dividend so apportioned shall at the option
9 of the party entitled to elect such option be either (a)
10 payable in cash or (b) applied to any one of such other
11 dividend options as may be provided by the policy. If any
12 such other dividend options are provided, the policy shall
13 further state which option shall be automatically effective
14 if such party shall not have elected some other option.
15 If the policy specifies a period within which such other
16 dividend option may be elected, such period shall be not
17 less than thirty days following the date on which such
18 dividend is due and payable. The annually apportioned
19 dividend shall be deemed to be payable in cash within
20 the meaning of (a) above even though the policy provides
21 that payment of such dividend is to be deferred for a
22 specified period, provided such period does not exceed six
23 years from the date of apportionment and that interest
24 will be added to such dividend at a specified rate. If a
25 participating policy provides that the benefit under any
26 paid-up nonforfeiture provision is to be participating, it
27 may provide that any divisible surplus apportioned while
28 the insurance is in force under such nonforfeiture pro-
29 vision shall be applied in the manner set forth in the
30 policy.

Sec. 8. *Loans on New Policies.*—(a) There shall be a

2 provision that after the policy has a cash surrender value
3 and while no premium is in default beyond the grace
4 period for payment, the insurer will advance, on proper
5 assignment of pledge of the policy and on the sole security
6 thereof, at a specified rate of interest not exceeding six
7 percent per annum, an amount equal to or, at the option
8 of the party entitled thereto, less than the loan value of
9 the policy. The loan value of the policy shall be at least
10 equal to the cash surrender value at the end of the then
11 current policy year, provided that the insurer may deduct,
12 either from such loan value or from the proceeds of the
13 loan, any existing indebtedness not already deducted in
14 determining such cash surrender value including any
15 interest then accrued but not due, any unpaid balance of
16 premium for the current policy year, and interest on the
17 loan to the end of the current policy year. The policy may
18 also provide that if interest on any indebtedness is not
19 paid when due it shall then be added to the existing
20 indebtedness and shall bear interest at the same rate, and
21 that if and when the total indebtedness on the policy,
22 including interest due or accrued, equals or exceeds the
23 amount of the loan value thereof, then the policy shall
24 terminate and become void. The policy shall reserve to the
25 insurer the right to defer the granting of a loan, other
26 than for the payment of any premium to the insurer, for
27 six months after application therefor. The policy, at the
28 insurer's option, may provide for automatic premium loan,
29 subject to an election of the party entitled to elect.

30 (b) This section shall not apply to term policies nor to
31 term insurance benefits provided by rider or supple-
32 mented policy provision.

Sec. 9. *Nonforfeiture Benefits.*—There shall be pro-
2 visions for nonforfeiture benefits and cash surrender
3 values as required by section thirty of this article.

Sec. 10. *Table of Values.*—There shall be a table show-
2 ing in figures the loan value and the options available
3 under the policy each year upon default in premium pay-
4 ments, during the first twenty years or during the term
5 of the policy, whichever is shorter.

2 Sec. 11. *Table of Instalments.*—In case the policy pro-
3 vides that the proceeds may be payable in instalments
4 which are determinable at issue of the policy, there shall
5 be a table showing the amounts of the guaranteed instal-
6 ments.

2 Sec. 12. *Reinstatements.*—There shall be a provision
3 that unless the policy has been surrendered for its cash
4 surrender value or unless the paid-up term insurance, if
5 any, has expired, the policy will be reinstated at any time
6 within three years from the date of premium default upon
7 written application therefor, the production of evidence
8 of insurability satisfactory to the insurer, the payment
9 of all premiums in arrears, and the payment or reinstatement
10 of any other indebtedness to the insurer upon the
11 policy, all with interest at a rate not exceeding six per-
12 cent per annum compounded annually.

2 Sec. 13. *Payment of Premiums.*—There shall be a pro-
3 vision that all premiums after the first shall be payable
4 in advance.

2 Sec. 14. *Payment of Claims.*—There shall be a provision
3 that when a policy shall become a claim by the death of
4 the insured settlement shall be made upon receipt of
5 due proof of death and, at the insurer's option, surrender
6 of the policy and/or proof of the interest of the claimant.
7 If an insurer shall specify a particular period prior to the
8 expiration of which settlement shall be made, such period
9 shall not exceed two months from the receipt of such
10 proofs.

2 Sec. 15. *Title.*—There shall be a title on the face of the
3 policy, briefly describing the same.

2 Sec. 16. *Excluded or Restricted Coverage.*—A clause in
3 any policy of life insurance providing that such policy
4 shall be incontestable after a specified period shall pre-
5 clude only a contest of the validity of the policy, and
6 shall not preclude the assertion at any time of defenses
7 based upon provisions in the policy which exclude or
8 restrict coverage, whether or not such restrictions or
9 exclusions are excepted in such clause.

Sec. 17. *Annuity Contracts—Standard Provisions.*—

2 (a) No annuity or pure endowment contract, other than
3 reversionary annuities, survivorship annuities or group
4 annuities and except as stated herein, shall be delivered
5 or issued for delivery in this state unless it contains in
6 substance each of the provisions specified in sections
7 eighteen to twenty-three, inclusive, of this article. Any
8 of such provisions not applicable to single premium an-
9 nuities or single premium pure endowment contracts shall
10 not, to that extent, be incorporated therein.

11 (b) This section shall not apply to contracts for de-
12 ferred annuities included in, or upon the lives of bene-
13 ficiaries under, life insurance policies.

Sec. 18. *Same—Grace Period.*—In an annuity or pure
2 endowment contract, other than a reversionary, survivor-
3 ship or group annuity, there shall be a provision that
4 there shall be a period of grace of not less than thirty-one
5 days, within which any stipulated payment to the insurer
6 falling due after the first may be made, subject at the
7 option of the insurer to an interest charge thereon at a
8 rate to be specified in the contract but not exceeding six
9 percent per annum for the number of days of grace
10 elapsing before such payment, during which period of
11 grace the contract shall continue in full force; but in
12 case a claim arises under the contract on account of death
13 prior to expiration of the period of grace before the over-
14 due payment to the insurer or the deferred payments of
15 the current contract year, if any, are made, the amount
16 of such payments, with interest on any overdue pay-
17 ments, may be deducted from any amount payable under
18 the contract in settlement.

Sec. 19. *Same—Incontestability.*—If any statements,
2 other than those relating to age, sex and identity are
3 required as a condition to issuing an annuity or pure
4 endowment contract, other than a reversionary, survivor-
5 ship, or group annuity, and subject to section twenty-one
6 of this article, there shall be a provision that the contract
7 shall be incontestable after it has been in force during
8 the lifetime of the person or of each of the persons as
9 to whom such statements are required, for a period of

10 two years from its date of issue, except for nonpayment
11 of stipulated payments to the insurer; and at the option
12 of the insurer such contract may also except any pro-
13 visions relative to benefits in the event of disability and
14 any provisions which grant insurance specifically against
15 death by accident or accidental means.

2 Sec. 20. *Same—Entire Contract.*—In an annuity or
3 pure endowment contract, other than a reversionary, sur-
4 vivorship, or group annuity, there shall be a provision
5 that the contract shall constitute the entire contract be-
6 tween the parties or, if a copy of the application is en-
7 dorsed upon or attached to the contract when issued, a
8 provision that the contract and the application therefor
9 shall constitute the entire contract between the parties.

2 Sec. 21. *Same—Misstatement of Age or Sex.*—In an
3 annuity or pure endowment contract, other than a re-
4 versionary, survivorship, or group annuity, there shall
5 be a provision that if the age or sex of the person or
6 persons upon whose life or lives the contract is made,
7 or of any of them, has been misstated, the amount pay-
8 able or benefits accruing under the contract shall be such
9 as the stipulated payment or payments to the insurer
10 would have purchased according to the correct age or
11 sex; and that if the insurer shall make or has made any
12 overpayment or overpayments on account of any such
13 misstatement, the amount thereof with interest at the
14 rate to be specified in the contract but not exceeding six
15 percent per annum, may be charged against the current
16 or next succeeding payment or payments to be made by
17 the insurer under the contract.

2 Sec. 22. *Same—Dividends.*—If any annuity or pure
3 endowment contract, other than a reversionary, survivor-
4 ship, or group annuity, is participating, there shall be a
5 provision that the insurer shall annually ascertain and
6 apportion any divisible surplus accruing on the contract.

2 Sec. 23. *Same—Reinstatement.*—In an annuity or pure
3 endowment contract, other than a reversionary, survivor-
4 ship, or group annuity, there shall be a provision that the
5 contract may be reinstated at any time within one year

5 from the default in making stipulated payments to the
6 insurer, unless the cash surrender value has been paid,
7 but all overdue stipulated payments and any indebtedness
8 to the insurer on the contract shall be paid or reinstated
9 with interest thereon at a rate to be specified in the con-
10 tract but not exceeding six percent per annum payable
11 annually, and in cases where applicable the insurer may
12 also include a requirement of evidence of insurability
13 satisfactory to the insurer.

Sec. 24. *Standard Provisions of Reversionary Annuities.*—
2 (a) Except as stated herein, no contract for a re-
3 versionary annuity shall be delivered or issued for de-
4 livery in this state unless it contains in substance each
5 of the following provisions:

6 (1) Any such reversionary annuity contract shall con-
7 tain the provisions specified in sections eighteen, nine-
8 teen, twenty, twenty-one and twenty-two of this article,
9 except that under said section eighteen the insurer may
10 at its option provide for an equitable reduction of the
11 amount of the annuity payments in settlement of an
12 overdue or deferred payment in lieu of providing for de-
13 duction of such payments from an amount payable upon
14 settlement under the contract.

15 (2) In such reversionary annuity contracts there shall
16 be a provision that the contract may be reinstated at
17 any time within three years from the date of default in
18 making stipulated payments to the insurer, upon produc-
19 tion of evidence of insurability satisfactory to the insurer,
20 and upon condition that all overdue payments and any
21 indebtedness to the insurer on account of the contract be
22 paid, or, within the limits permitted by the then cash
23 values of the contract, reinstated, with interest as to both
24 payments and indebtedness at a rate to be specified in the
25 contract but not exceeding six percent per annum com-
26 pounded annually.

27 (b) This section shall not apply to group annuities or
28 to annuities included in life insurance policies, and any
29 of such provisions not applicable to single premium an-
30 nuities shall not to that extent be incorporated therein.

Sec. 25. *Limitation of Liability.*—(a) No policy of life insurance shall be delivered or issued for delivery in this state if it contains a provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified therein in the event of death under any one or more of the following circumstances:

(1) Death as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces, or of any act or hazard of such war or action, or of service in the military, naval, or air forces or in civilian forces auxiliary thereto, or from any cause while a member of such military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in such military action;

(2) Death as a result of aviation;

(3) Death as a result of a specified hazardous occupation or occupations;

(4) Death while the insured is outside continental United States and Canada;

(5) Death within two years from the date of issue of the policy as a result of suicide, while sane or insane.

(b) A policy which contains any exclusion or restriction pursuant to subsection (a) of this section shall also provide that in the event of death under the circumstances to which any such exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioners' reserve valuation method upon the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy provides for no such benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy) with adjustment for indebtedness or dividend credit.

(c) This section shall not apply to group life insurance, accident and sickness insurance, reinsurance, or annuities, or to any provision in a life insurance policy relating to

41 disability benefits or to additional benefits in the event
42 of death by accident or accidental means.

43 (d) Nothing contained in this section shall prohibit any
44 provision which in the opinion of the commissioner is
45 more favorable to the policyholder than a provision per-
46 mitted by this section.

Sec. 26. *Incontestability After Reinstatement.*—The re-
2 instatement of any policy of life insurance or annuity con-
3 tract hereafter delivered or issued for delivery in this
4 state may be contested on account of fraud or misrepre-
5 sentation of facts material to the reinstatement only for
6 the same period following reinstatement and with the
7 same conditions and exceptions as the policy provides
8 with respect to contestability after original issuance.

Sec. 27. *Policy Settlements.*—Any life insurer shall have
2 the power to hold under agreement the proceeds of any
3 policy issued by it, upon such terms and restrictions as
4 to revocation by the policyholder and control by bene-
5 ficiaries, and with such exemptions from the claims of
6 creditors of beneficiaries other than the policyholder as
7 set forth in the policy or as agreed to in writing by the
8 insurer and the policyholder. Upon maturity of a policy,
9 in the event the policyholder has made no such agree-
10 ment, the insurer shall have the power to hold the pro-
11 ceeds of the policy under an agreement with the bene-
12 ficiaries. The insurer shall not be required to segregate
13 the funds so held but may hold them as part of its gen-
14 eral assets.

Sec. 28. *Indebtedness Deducted From Proceeds.*—In de-
2 termining the amount due under any life insurance policy
3 heretofore or hereafter issued, deduction may be made of:

4 (a) Any unpaid premiums or instalments thereof for
5 the current policy year due under the terms of the policy,
6 and of

7 (b) The amount of principal and accrued interest of
8 any policy loan or other indebtedness against the policy
9 then remaining unpaid.

Sec. 29. *Dual or Multiple Pay Policies Prohibited.*—No
2 life insurance policy shall be delivered or issued for de-

3 livery in this state if it provides that on the death of
4 anyone not insured thereunder, the owner or beneficiary
5 of the policy shall receive the payment or granting of
6 anything of value.

Sec. 30. *Standard Nonforfeiture Law.*—(1) In the case
2 of policies issued on or after the original operative date
3 of this provision, no policy of life insurance, except as
4 stated in subsection six, shall be delivered or issued for
5 delivery in this state unless it shall contain in substance
6 the following provisions, or corresponding provisions
7 which in the opinion of the commissioner are at least as
8 favorable to the defaulting or surrendering policyholder:

9 (a) That, in the event of default in any premium pay-
10 ment, the insurer will grant, upon proper request not
11 later than sixty days after the due date of the premium
12 in default, a paid-up nonforfeiture benefit on a plan
13 stipulated in the policy, effective as of such due date, of
14 such value as may be hereinafter specified;

15 (b) That, upon surrender of the policy within sixty
16 days after the due date of any premium payment in de-
17 fault after premiums have been paid for at least three full
18 years, the insurer will pay, in lieu of any paid-up non-
19 forfeiture benefit, a cash surrender value of such amount as
20 may be hereinafter specified;

21 (c) That a specified paid-up nonforfeiture benefit shall
22 become effective as specified in the policy unless the per-
23 son entitled to make such election elects another avail-
24 able option not later than sixty days after the due date
25 of the premium in default;

26 (d) That, if the policy shall have become paid up by
27 completion of all premium payments or if it is continued
28 under any paid-up nonforfeiture benefit which became
29 effective on or after the third policy anniversary the in-
30 surer will pay, upon surrender of the policy within thirty
31 days after any policy anniversary, a cash surrender value
32 of such amount as may be hereinafter specified;

33 (e) A statement of the mortality table and interest rate
34 used in calculating the cash surrender values and the
35 paid-up nonforfeiture benefits available under the policy,
36 together with a table showing the cash surrender value,

37 if any, and paid-up nonforfeiture benefits, if any, avail-
38 able under the policy on each policy anniversary either
39 during the first twenty policy years or during the term
40 of the policy, whichever is shorter, such values and bene-
41 fits to be calculated upon the assumption that there are
42 no dividends or paid-up additions credited to the policy
43 and that there is no indebtedness to the insurer on the
44 policy;

45 (f) A statement that the cash surrender values and
46 the paid-up nonforfeiture benefits available under the
47 policy are not less than the minimum values and benefits
48 required by or pursuant to the insurance law of the state
49 in which the policy is delivered; an explanation of the
50 manner in which the cash surrender values and the paid-
51 up nonforfeiture benefits are altered by the existence of
52 any paid-up additions credited to the policy or any indebt-
53 edness to the company on the policy; if a detailed state-
54 ment of the method of computation of the values and
55 benefits shown in the policy is not stated therein, a state-
56 ment that such method of computation has been filed
57 with the insurance supervisory official of the state in
58 which the policy is delivered; and a statement of the
59 method to be used in calculating the cash surrender value
60 and paid-up nonforfeiture benefit available under the
61 policy on any policy anniversary beyond the last anni-
62 versary for which such values and benefits are consecu-
63 tively shown in the policy.

64 Any of the foregoing provisions or portions thereof, not
65 applicable by reason of the plan of insurance may, to the
66 extent inapplicable, be omitted from the policy.

67 The insurer shall reserve the right to defer the payment
68 of any cash surrender value for a period of six months
69 after demand therefor with surrender of the policy.

70 (2) Any cash surrender value available under the
71 policy in the event of default in a premium payment due
72 on any policy anniversary, whether or not required by
73 subsection one, shall be an amount not less than the ex-
74 cess, if any, of the present value, on such anniversary,
75 of the future guaranteed benefits which would have been
76 provided for by the policy, including any existing paid-

77 up additions, if there had been no default, over the sum
78 of (i) the then present value of the adjusted premiums
79 as defined in subsection four, corresponding to premiums
80 which would have fallen due on and after such anni-
81 versary, and (ii) the amount of any indebtedness to the
82 insurer on the policy. Any cash surrender value avail-
83 able within thirty days after any policy anniversary un-
84 der any policy paid up by completion of all premium
85 payments or any policy continued under any paid-up
86 nonforfeiture benefit, whether or not required by sub-
87 section one, shall be an amount not less than the present
88 value, on such anniversary, of the future guaranteed
89 benefits provided for by the policy, including any exist-
90 ing paid-up additions decreased by any indebtedness to
91 the insurer on the policy.

92 (3) Any paid-up nonforfeiture benefit available under
93 the policy in the event of default in a premium payment
94 due on any policy anniversary shall be such that its
95 present value as of such anniversary shall be at least
96 equal to the cash surrender value then provided for by
97 the policy or, if none is provided for, that cash surrender
98 value which would have been required by this section
99 in the absence of the condition that premiums shall have
100 been paid for at least a specified period.

101 (4) The adjusted premiums for any policy shall be cal-
102 culated on an annual basis and shall be such uniform
103 percentage of the respective premiums specified in the
104 policy for each policy year, excluding extra premiums
105 on a substandard policy, that the present value, at the
106 date of issue of the policy, of all such adjusted premiums
107 shall be equal to the sum of (i) the then present value
108 of the future guaranteed benefits provided for by the
109 policy; (ii) two percent of the amount of insurance, if
110 the insurance be uniform in amount, or of the equivalent
111 uniform amount, as hereinafter defined, if the amount of
112 insurance varies with duration of the policy; (iii)
113 forty percent of the adjusted premium for the first policy
114 year; (iv) twenty-five percent of either the adjusted
115 premium for the first policy year or the adjusted premium
116 for a whole life policy of the same uniform or equivalent

117 uniform amount with uniform premiums for the whole
118 of life issued at the same age for the same amount of
119 insurance, whichever is less: *Provided, however,* That in
120 applying the percentages specified in (iii) and (iv) above,
121 no adjusted premium shall be deemed to exceed four
122 percent of the amount of insurance or level amount
123 equivalent thereto. The date of issue of a policy for the
124 purpose of this subsection shall be the date as of which
125 the rated age of the insured is determined.

126 In the case of a policy providing an amount of insur-
127 ance varying with duration of the policy, the equivalent
128 uniform amount thereof for the purpose of this subsec-
129 tion shall be deemed to be the level amount of insurance
130 provided by an otherwise similar policy, containing the
131 same endowment benefit or benefits, if any, issued at the
132 same age and for the same term, the amount of which does
133 not vary with duration and the benefits under which have
134 the same present value at the date of issue as the benefits
135 under the policy.

136 All adjusted premiums and present values referred to in
137 this section shall be calculated on the basis of the commis-
138 sioners 1941 Standard Ordinary Mortality Table for ordi-
139 nary insurance and the 1941 Standard Industrial Mor-
140 tality Table for industrial insurance and the rate of in-
141 terest, not exceeding three and one-half percent per an-
142 num, specified in the policy for calculating cash surrender
143 values and paid-up nonforfeiture benefits: *Provided,*
144 That in calculating the present value of any paid-up term
145 insurance with accompanying pure endowment, if any,
146 offered as a nonforfeiture benefit, the rate of mortality as-
147 sumed may be not more than one hundred and thirty per-
148 cent of the rates of mortality according to such applicable
149 table: *Provided further,* That for insurance issued on a
150 substandard basis, the calculation of any such adjusted
151 premiums and present values may be based on such other
152 table of mortality as may be specified by the insurer and
153 approved by the commissioner.

154 (5) Any cash surrender value and any paid-up non-
155 forfeiture benefit, available under the policy in the event

156 of default in a premium payment due at any time other
157 than on the policy anniversary, shall be calculated with
158 allowance for the lapse of time and the payment of frac-
159 tional premiums beyond the last preceding policy anni-
160 versary. All values referred to in subsections two, three
161 and four may be calculated upon the assumption that any
162 death benefit is payable at the end of the policy year of
163 death. The net value of any paid-up additions, other than
164 paid-up term additions, shall be not less than the divi-
165 dends paid to provide such additions. Notwithstanding
166 the provisions of subsection two, additional benefits pay-
167 able (a) in the vent of death or dismemberment by acci-
168 dent or accidental means, (b) in the event of total and
169 permanent disability, (c) as reversionary or deferred
170 reversionary annuity benefits, (d) as term insurance ben-
171 efits provided by a rider or supplemental policy provision
172 to which, if issued as a separate policy, this section would
173 not apply and (e) as other policy benefits additional to
174 life insurance and endowment benefits, and premiums for
175 all such additional benefits, shall be disregarded in as-
176 certaining cash surrender values and nonforfeiture bene-
177 fits required by this section, and no such additional bene-
178 fits shall be required to be included in any paid-up non-
179 forfeiture benefits.

180 (6) This section shall not apply to any reinsurance,
181 group insurance, pure endowment, annuity or reversion-
182 ary annuity contract, nor to any term policy of uniform
183 amount, or renewal thereof, of fifteen years or less expir-
184 ing before age sixty-six, for which uniform premiums
185 are payable during the entire term of the policy, nor
186 to any term policy of decreasing amount on which each
187 adjusted premium, calculated as specified in subsection
188 four, is less than the adjusted premium so calculated on
189 a policy issued at the same age and for the same initial
190 amount of insurance for a term defined as follows—for
191 ages at issue fifty and under the term shall be fifteen
192 years, thereafter, the terms shall decrease one year for
193 each year of age beyond fifty, nor to any policy for which
194 shall be delivered outside this state through an agent or
195 other representative of the insurer issuing the policy.

Sec. 31. *Industrial Life Insurance—Required Provisions.*

2 —No policy of industrial life insurance, which is that form
3 of life insurance provided by an individual insurance con-
4 tract under which premiums are payable monthly or
5 oftener, and bearing the words “industrial policy” or
6 “weekly premium policy” printed upon the policy as a
7 part of the descriptive matter, shall be delivered or be
8 issued for delivery in this state unless it complies with
9 sections sixteen, twenty-five, twenty-six, twenty-nine,
10 and thirty of this article, nor unless such policy contains
11 in substance the applicable provisions set forth in sections
12 thirty-two to forty-four, inclusive, of this article.

Sec. 32. *Same—Grace Period.*—There shall be a pro-
2 vision in each industrial life insurance policy that the in-
3 sured is entitled to a grace period of four weeks within
4 which the payment of any premium after the first may
5 be made, except that in policies the premiums for which
6 are payable monthly, the period of grace shall be not
7 less than thirty-one days, and that during the period of
8 grace the policy shall continue in full force, but if during
9 the grace period the policy becomes a claim, then any
10 overdue and unpaid premiums may be deducted from any
11 settlement under the policy.

Sec. 33. *Same—Entire Contract; Statements in Applica-*
2 *tion.*—There shall be a provision in each industrial life in-
3 surance policy that the policy shall constitute the entire
4 contract between the parties, or, if a copy of the applica-
5 tion is endorsed upon or attached to the policy when is-
6 sued, a provision that the policy and the application there-
7 for shall constitute the entire contract. If the application
8 is so made a part of the contract, the policy shall also pro-
9 vide that all statements made by the applicant in such
10 application shall, in the absence of fraud, be deemed to be
11 representations and not warranties.

Sec. 34. *Same—Incontestability.*—There shall be a pro-
2 vision in each industrial life insurance policy that the
3 policy (exclusive of provisions relating to disability bene-
4 fits or to additional benefits in the event of death by ac-
5 cident or accidental means) shall be incontestable, except

6 for non-payment of premiums, after it has been in force
7 during the lifetime of the insured for a period of two
8 years from its date of issue.

2 Sec. 35. *Same—Misstatement of Age.*—There shall be
3 a provision in each industrial life insurance policy that if
4 it is found that the age of the individual insured, or the
5 age of any other individual considered in determining the
6 premium, has been misstated, any amount payable or
7 benefit accruing under the policy shall be such as the
8 premium would have purchased at the correct age or ages.

2 Sec. 36. *Same—Dividends.*—If any industrial life insur-
3 ance policy is a participating policy, there shall be a pro-
4 vision that the insurer shall annually ascertain and ap-
5 portion any divisible surplus accruing on the policy, ex-
6 cept that at the option of the insurer such participation
7 may be deferred to the end of the fifth policy year. This
8 provision shall not prohibit the payment of additional
9 dividends on default of payment of premiums or termi-
0 nation of the policy.

2 Sec. 37. *Same—Nonforfeiture Benefits; Cash Surrender*
3 *Values.*—There shall be in each policy of industrial life in-
4 surance provisions for nonforfeiture benefits and cash
5 surrender values as required by section thirty of this
6 article.

2 Sec. 38. *Same—Reinstatement.*—There shall be in each
3 industrial life insurance policy a provision that unless the
4 policy has been surrendered for its cash surrender value
5 or unless the paid-up term insurance, if any, has expired,
6 the policy will be reinstated at any time within two years
7 from the date of premium default upon written applica-
8 tion therefor, the production of evidence of insurability
9 satisfactory to the insurer, the payment of all premiums
10 in arrears, and the payment or reinstatement of any other
11 indebtedness to the insurer upon the policy, all with in-
12 terest at a rate not exceeding six percent per annum com-
pounded annually.

2 Sec. 39. *Same—Settlement.*—There shall be a provision
3 in each industrial insurance policy that when the policy

3 becomes a claim by the death of the insured, settlement
4 shall be made upon surrender of the policy and receipt of
5 due proof of death.

Sec. 40. *Same—Beneficiary and Facility of Payment*
2 *Clause.*—(a) Each such industrial life insurance policy
3 shall have a space on the front or back page of the policy
4 for the name of the beneficiary designated with a reserva-
5 tion of the right to designate or change the beneficiary
6 after the issuance of the policy.

7 (b) The policy may also provide that no designation or
8 change of beneficiary shall be binding on the insurer unless
9 endorsed on the policy by the insurer, and that the insurer
10 may refuse to endorse the name of any proposed benefi-
11 ciary who does not appear to the insured to have an
12 insurable interest in the life of the insured. Such a policy
13 may also provide that if the beneficiary designated in the
14 policy does not surrender the policy with due proof of
15 death within the period stated in the policy, which shall
16 be not less than thirty days after the death of the insured,
17 or if the beneficiary is the estate of the insured or is a
18 minor, or dies before the insured, or is not legally compe-
19 tent to give a valid release, then the insurer may make
20 payment thereunder to the executor or administrator of
21 the insured, or to any of the insured's relatives by blood
22 or legal adoption or connection by marriage, or to any per-
23 son appearing to the insurer to be equitably entitled
24 thereto by reason of having been named beneficiary, or
25 by reason of having incurred expense for the maintenance,
26 medical attention or burial of the insured. Such policy
27 may also include a similar provision applicable to any
28 other payment due under the policy.

Sec. 41. *Same—Direct Payment of Premiums.*—In the
2 case of weekly premium industrial life insurance policies,
3 there may be a provision that upon proper notice to the
4 insurer, while premiums on the policy are not in default
5 beyond the grace period, of the intention to pay future
6 premiums directly to the insurer at its home office or any
7 office designated by the insurer for the purpose, the in-
8 surer will, at the end of each period of a year from the

9 due date of the first premium so paid, for which period
10 such premiums are so paid continuously without default
11 a stated percentage of the premiums in an amount which
12 fairly represents the savings in collection expense.

Sec. 42. *Same—Conversion of Weekly Policies.*—There
2 shall be a provision in the case of weekly premium in-
3 dustrial life insurance policies granting to the insured,
4 upon proper written request and upon presentation of
5 evidence of insurability satisfactory to the insurer, the
6 privilege of converting a weekly premium industrial in-
7 surance policy to any form of life insurance with less
8 frequent premium payments regularly issued by the in-
9 surer, in accordance with terms and conditions agreed
10 upon with the insurer. The privilege of making such con-
11 version need be granted only if the insurer's weekly
12 premium industrial policies on the life insured, in force
13 as premium paying insurance and on which conversion is
14 requested, grant benefits in event of death, exclusive of
15 additional accidental death benefits and exclusive of any
16 dividend additions, in an amount not less than the mini-
17 mum amount of such insurance with less frequent pre-
18 mium payments issued by the insurer at the age of the
19 insured on the plan of industrial or ordinary insurance
20 desired.

Sec. 43. *Same—Conversion of Monthly Policies.*—There
2 shall be a provision, in the case of monthly premium in-
3 dustrial life insurance policies, granting, upon proper
4 written request and upon presentation of evidence of in-
5 surability satisfactory to the insurer, the privilege of con-
6 verting a monthly premium industrial life insurance
7 policy to any form of ordinary life insurance regularly
8 issued by the insurer, in accordance with terms and con-
9 ditions agreed upon with the insurer. The privilege of
10 making such conversion need be granted only if the in-
11 surer's monthly premium industrial policies on the life
12 insured, in force as premium paying insurance and on
13 which conversion is requested, grant benefits in event of
14 death, exclusive of additional accidental death benefits
15 and exclusive of any dividend additions, in an amount
16 not less than the minimum amount of ordinary insurance

17 issued by the insurer at the age of the insured on the plan
18 of ordinary insurance desired.

Sec. 44. *Same—Title of Policies.*—There shall be a title
2 on the face of each industrial life insurance policy briefly
3 describing its form.

Sec. 45. *Same—Application of Provisions to Term or*
2 *Specified Insurance.*—Any of the provisions required in
3 industrial life insurance policies by sections thirty-two to
4 forty-four, inclusive, of this article or any portion thereof
5 which are not applicable to single premium or term pol-
6 icies or to policies issued or granted pursuant to nonfor-
7 feiture provisions shall to that extent not be incorporated
8 therein.

Sec. 46. *Same—Prohibited Provisions in Policies.*—No
2 policy of industrial life insurance shall contain any of the
3 following provisions:

4 (a) A provision by which the insurer may deny liability
5 under the policy for the reason that the insured has pre-
6 viously obtained other insurance from the same insurer.

7 (b) A provision giving the insurer the right to declare
8 the policy void because the insured has had any disease
9 or ailment, whether specified or not, or because the in-
10 sured has received institutional, hospital, medical or sur-
11 gical treatment or attention, except a provision which
12 gives the insurer the right to declare the policy void if
13 the insured has, within two years prior to the issuance
14 of the policy, received institutional, hospital, medical or
15 surgical treatment or attention and if the insured or
16 claimant under the policy fails to show that the condition
17 occasioning such treatment or attention was not of a
18 serious nature or was not material to the risk.

19 (c) A provision giving the insurer the right to declare
20 the policy void because the insured has been rejected for
21 insurance, unless such right be conditioned upon a show-
22 ing by the insurer that knowledge of such rejection would
23 have led to a refusal by the insurer to make such contract.

Sec. 47. *Burial Insurance.*—(a) Burial insurance is that
2 type of insurance whereby an insurer agrees to pay for

3 any or all of the incidents of the burial of the body of a
4 named or designated person, whether such insurance is
5 evidenced or effected by any kind of agreement, policy,
6 contract, bond, assurance, guarantee, by-law, regulation,
7 or otherwise. No provision of this article except this sec-
8 tion shall apply to burial insurance, and no provision of
9 article fourteen of this chapter shall apply to burial in-
10 surance.

11 (b) Burial insurance shall be transacted only by in-
12 surers licensed in this state to transact life insurance.

13 (c) All burial insurance benefits shall be paid in cash
14 to the beneficiary. No insurer issuing burial insurance
15 shall contract to pay or pay such benefits or any part
16 thereof to any official undertaker, designated undertaker
17 or undertaking concern, or to any particular tradesman
18 or businessman.

19 (d) This section shall not apply to fraternal benefit
20 societies operating under article twenty-three of this
21 chapter or to any organization of employees under a
22 common employer.

Article 14. Group Life Insurance

Section

1. Contracts must meet group requirements.
2. Employee groups.
3. Debtor groups.
4. Labor union groups.
5. Trustee groups.
6. Limit as to amount.
7. Dependent coverage.
8. Group life standard provisions.
9. Grace period.
10. Incontestability.
11. Application; representations.
12. Insurability.
13. Misstatement of age.
14. Beneficiary.
15. Certificates.
16. Conversion on termination of eligibility.
17. Conversion on termination of policy.
18. Death pending conversion.
19. Certificate or statement of coverage to debtor.
20. Notice of conversion rights.
21. Application of dividends; rate reductions.
22. Group annuity contracts—standard provisions.
23. Same—grace period.
24. Same—entire contract.
25. Same—misstatements.
26. Same—termination benefits.
27. Same—group annuity certificates.

Section 1. *Contracts Must Meet Group Requirements.*—

2 (a) No life insurance policy or certificate shall be de-
3 livered or issued for delivery in this state insuring the
4 lives of more than one individual unless to one of the
5 groups as provided for in sections two to five, inclusive,
6 of this article, and unless in compliance with the other
7 applicable provisions of those sections.

8 (b) Paragraph (a), above, shall not apply to life insur-
9 ance policies:

10 (1) Insuring only individuals related by marriage,
11 blood or legal adoption;

12 (2) Insuring only individuals having a common interest
13 through ownership of a business enterprise, or a sub-
14 stantial legal interest or equity therein, and who are ac-
15 tively engaged in the management thereof; or

16 (3) Insuring only individuals otherwise having an in-
17 surable interest in each other's lives.

18 (c) Nothing in this article validates any charge or prac-
19 tice illegal under any rule of law or regulation governing
20 usury, small loans, retail instalment sales, or the like, or
21 extends the application of any such rule of law or regula-
22 tion to any transaction not otherwise subject thereto.

Sec. 2. *Employee Groups.*—The lives of a group of in-
2 dividuals may be insured under a policy issued to an
3 employer, or to the trustees of a fund established by an
4 employer, which employer or trustees shall be deemed
5 the policyholder, to insure employees of the employer
6 for the benefit of persons other than the employer, subject
7 to the following requirements:

8 (a) The employees eligible for insurance under the
9 policy shall be all of the employees of the employer, or
10 all of any class or classes thereof determined by condi-
11 tions pertaining to their employment. The policy may
12 provide that the term "employees" shall include the em-
13 ployees of one or more subsidiary corporations, and the
14 employees, individual proprietors, and partners of one
15 or more affiliated corporations, proprietors or partnerships
16 if the business of the employer and of such affiliated cor-
17 porations, proprietors or partnerships is under common

18 control through stock ownership, contract or otherwise.
19 The policy may provide that the term "employees" shall
20 include the individual proprietor or partners if the em-
21 ployer is an individual proprietor or a partnership. The
22 policy may provide that the term "employees" shall in-
23 clude retired employees. No director of a corporate em-
24 ployer shall be eligible for insurance under the policy
25 unless such person is otherwise eligible as a bona fide
26 employee of the corporation by performing services other
27 than the usual duties of a director. No individual pro-
28 prietor or partner shall be eligible for insurance under
29 the policy unless he is actively engaged in and devotes a
30 substantial part of his time to the conduct of the business
31 of the proprietor or partnership. A policy issued to trus-
32 tees may provide that the term "employees" shall include
33 the trustees or their employees, or both, if their duties
34 are principally connected with such trusteeship. A policy
35 issued to insure the employees of a public body may pro-
36 vide that the term "employees" shall include elected or
37 appointed officials.

38 (b) The premium for the policy shall be paid by the
39 policyholder, either wholly from the employer's funds or
40 funds contributed by him or partly from such funds and
41 partly from funds contributed by the insured employees.
42 No policy may be issued on which the entire premium is
43 to be derived from funds contributed by the insured em-
44 ployees, except that the entire premium may be paid from
45 funds contributed by the insured employees if the amount
46 of insurance does not exceed one thousand dollars on the
47 life of any employee. A policy on which part of the
48 premium is to be derived from funds contributed by the
49 insured employees may be placed in force only if at least
50 seventy-five percent of the then eligible employees, ex-
51 cluding any as to whom evidence of individual insura-
52 bility is not satisfactory to the insurer, elect to make the
53 required contributions. A policy on which no part of the
54 premium is to be derived from funds contributed by the
55 insured employees must insure all eligible employees, or
56 all except any as to whom evidence of individual insur-
57 ability is not satisfactory to the insurer.

58 (c) The policy must cover at least ten employees at
59 date of issue.

60 (d) The amounts of insurance under the policy must
61 be based upon some plan precluding individual selection
62 either by the employees or by the employer or trustees.

Sec. 3. *Debtor Groups.*—The lives of a group of indi-
2 viduals may be insured under a policy issued to a creditor,
3 who shall be deemed the policyholder, to insure debtors
4 of the creditor, subject to the following requirements:

5 (a) The debtors eligible for insurance under the policy
6 shall be all of the debtors of the creditor whose indebted-
7 ness is repayable either (i) in instalments, or (ii) in one
8 sum at the end of a period not in excess of eighteen
9 months from the initial date of debt, or all of any class
10 or classes thereof determined by conditions pertaining to
11 the indebtedness or to the purchase giving rise to the
12 indebtedness. The policy may provide that the term
13 “debtors” shall include the debtors of one or more sub-
14 sidiary corporations, and the debtors of one or more affil-
15 iated corporations, proprietors, or partnerships if the
16 business of the policyholder and of such affiliated cor-
17 porations, proprietors or partnerships is under common
18 control through stock ownership, contract or otherwise.
19 No debtor shall be eligible unless the indebtedness con-
20 stitutes an obligation to repay which is binding upon him
21 during his lifetime, at and from the date the insurance
22 becomes effective upon his life.

23 (b) The premium for the policy shall be paid by the
24 policyholder, either from the creditor’s funds, or from
25 charges collected from the insured debtors, or from both.
26 A policy on which part or all of the premium is to be
27 derived from the collection from the insured debtors of
28 identifiable charges not required of uninsured debtors
29 shall not include, in the class or classes of debtors eligible
30 for insurance, debtors under obligations outstanding at
31 its date of issue without evidence of individual insura-
32 bility unless at least seventy-five percent of the then
33 eligible debtors elect to pay the required charges. A
34 policy on which no part of the premium is to be derived
35 from the collection of such identifiable charges must in-

36 sure all eligible debtors, or all except any as to whom
37 evidence of individual insurability is not satisfactory to
38 the insurer.

39 (c) The policy may be issued only if the group of
40 eligible debtors is then receiving new entrants at the rate
41 of at least one hundred persons yearly, or may reasonably
42 be expected to receive at least one hundred new entrants
43 during the first policy year, and only if the policy reserves
44 to the insurer the right to require evidence of individual
45 insurability if less than seventy-five percent of the new
46 entrants become insured. The policy may exclude from
47 the classes eligible for insurance classes of debtors de-
48 termined by age.

49 (d) The amount of insurance on the life of any debtor
50 shall at no time exceed the amount owed by him which
51 is repayable in instalments to the creditor, or ten thou-
52 sand dollars, whichever is less. Where the indebtedness
53 is repayable in one sum to the creditor, the insurance on
54 the life of any debtor shall in no instance be in effect
55 for a period in excess of eighteen months except that
56 such insurance may be continued for an additional period
57 not exceeding six months in the case of default, exten-
58 sion or recasting of the loan. The amount of the insurance
59 on the life of any debtor shall at no time exceed the
60 amount of the unpaid indebtedness, or ten thousand dol-
61 lars, whichever is less.

62 (e) The insurance shall be payable to the policyholder.
63 Such payment shall reduce or extinguish the unpaid in-
64 debtedness of the debtor to the extent of such payment.

Sec. 4. *Labor Union Groups.*—The lives of a group of
2 individuals may be insured under a policy issued to a
3 labor union, which shall be deemed the policyholder, to
4 insure members of such union for the benefit of persons
5 other than the union or any of its officials, representatives
6 or agents, subject to the following requirements:

7 (a) The members eligible for insurance under the policy
8 shall be all of the members of the union, or all of any
9 class or classes thereof determined by conditions pertain-
10 ing to their employment, or to membership in the union,
11 or both.

12 (b) The premium for the policy shall be paid by the
13 policyholder, either wholly from the union's funds, or
14 partly from such funds and partly from funds contributed
15 by the insured members specifically for their insurance,
16 except that the entire premium may be paid from funds
17 contributed by the insured members specifically for their
18 insurance if the amount of insurance does not exceed one
19 thousand dollars on the life of any member. A policy on
20 which part of the premium is to be derived from funds
21 contributed by the insured members specifically for their
22 insurance may be placed in force only if at least seventy-
23 five percent of the then eligible members, excluding any
24 as to whom evidence of individual insurability is not satis-
25 factory to the insurer, elect to make the required con-
26 tributions. A policy on which no part of the premium is
27 to be derived from funds contributed by the insured mem-
28 bers specifically for their insurance must insure all eligible
29 members, or all except any as to whom evidence of in-
30 dividual insurability is not satisfactory to the insurer.

31 (c) The policy must cover at least twenty-five members
32 at date of issue.

33 (d) The amounts of insurance under the policy must
34 be based upon some plan precluding individual selection
35 either by the members or by the union.

Sec. 5. *Trustee Groups.*—The lives of a group of indi-
2 viduals may be insured under a policy issued to the
3 trustees of a fund established by two or more employers
4 in the same industry or by one or more labor unions, or
5 by one or more employers and one or more labor unions,
6 which trustees shall be deemed the policyholders, to
7 insure employees of the employers or members of the
8 union for the benefit of persons other than the employers
9 or the unions, subject to the following requirements:

10 (a) The persons eligible for insurance shall be all of
11 the employees of the employers or all of the members of
12 the unions, or all of any class or classes thereof deter-
13 mined by conditions pertaining to their employment, or
14 to membership in the unions, or to both. The policy may
15 provide that the term "employees" shall include retired
16 employees, and the individual proprietor or partner if an

17 employer is an individual proprietor or a partnership. No
18 director of a corporate employer shall be eligible for in-
19 surance under the policy unless such person is otherwise
20 eligible as a bona fide employee of the corporation by per-
21 forming services other than the usual duties of a director.
22 No individual proprietor or partner shall be eligible for
23 insurance under the policy unless he is actively engaged
24 in and devotes a substantial part of his time to the conduct
25 of the business of the proprietor or partnership. The policy
26 may provide that the term "employees" shall include the
27 trustees or their employees, or both, if their duties are
28 principally connected with such trusteeship.

29 (b) The premium for the policy shall be paid by the
30 trustees wholly from funds contributed by the employer
31 or employers of the insured persons, or by the union or
32 unions, or by both, or partly from such funds and partly
33 from funds contributed by the insured persons. No policy
34 may be issued on which the entire premium is to be de-
35 rived from funds contributed by the insured persons
36 specifically for their insurance. A policy on which part
37 of the premium is to be derived from funds contributed
38 by the insured persons specifically for their insurance
39 may be placed in force only if at least seventy-five per-
40 cent of the then eligible persons, excluding any as to
41 whom evidence of insurability is not satisfactory to the
42 insurer, elect to make the required contributions. A
43 policy on which no part of the premium is to be derived
44 from funds contributed by the insured persons specifically
45 for their insurance must insure all eligible persons, or all
46 except any as to whom evidence of individual insurability
47 is not satisfactory to the insurer.

48 (c) The policy must cover at date of issue at least one
49 hundred persons and not less than an average of five per-
50 sons per employer unit; and if the fund is established by
51 the members of an association of employers the policy
52 may be issued only if (A) either (1) the participating
53 employers constitute at date of issue at least sixty percent
54 of those employer members whose employees are not
55 already covered for group life insurance or (2) the total
56 number of persons covered at date of issue exceeds six

57 hundred; and (B) the policy shall not require that, if a
58 participating employer discontinues membership in the
59 association, the insurance of his employees shall cease
60 solely by reason of such discontinuance.

61 (d) The amounts of insurance under the policy must
62 be based upon some plan precluding individual selection
63 either by the insured persons or by the policyholder,
64 employers, or unions.

Sec. 6. *Limit as to Amount.*—No such policy of group
2 life insurance may be issued to an employer, or to a labor
3 union, or to the trustees of a fund established in whole or
4 in part by an employer or a labor union, which provides
5 term insurance on any person which together with any
6 other term insurance under any group life insurance policy
7 or policies issued to the employer or employers of such
8 person or to a labor union or labor unions of which such
9 person is a member or to the trustees of a fund or funds
10 established in whole or in part by such employer or em-
11 ployers or such labor union or labor unions, exceeds
12 twenty thousand dollars, unless one hundred and fifty
13 percent of the annual compensation of such person from
14 his employer or employers exceeds twenty thousand dol-
15 lars, in which event all such term insurance shall not
16 exceed forty thousand dollars or one hundred and fifty
17 percent of such annual compensation, whichever is the
18 lesser.

Sec. 7. *Dependent Coverage.*—Any policy issued pursu-
2 ant to sections two, four and five of this article may be
3 extended to insure the employees or members against
4 loss due to the death of their spouses and minor children,
5 or any class or classes thereof, subject to the following
6 requirements:

7 (a) The premium for the insurance shall be paid by
8 the policyholder, either from the employer's or union's
9 funds or funds contributed by the employer or union, or
10 from funds contributed by the insured employees or mem-
11 bers, or from both. If any part of the premium is to be
12 derived from funds contributed by the insured employees
13 or members, the insurance with respect to spouses and
14 children may be placed in force only if at least seventy-

15 five percent of the then eligible employees or members,
 16 excluding any as to whose family members evidence of
 17 insurability is not satisfactory to the insurer, elect to make
 18 the required contribution. If no part of the premium is
 19 to be derived from funds contributed by the employees
 20 or members, all eligible employees or members, excluding
 21 any as to whose family members evidence of insurability
 22 is not satisfactory to the insurer, must be insured with
 23 respect to their spouses and children.

24 (b) The amounts of insurance must be based upon
 25 some plan precluding individual selection either by the
 26 employees or members or by the policyholder, employer or
 27 union, and shall not exceed, with respect to any spouse or
 28 child, the amount shown in the following schedule:

29 Age of Family Member	Maximum Amount
30 at Death	of Insurance
31 Under 6 months.....	\$ 100.00
32 6 months and under 2 years.....	200.00
33 2 years and under 3 years.....	400.00
34 3 years and under 4 years.....	600.00
35 4 years and under 5 years.....	800.00
36 5 years and over.....	1,000.00

37 (c) Upon termination of the insurance with respect to
 38 the members of the family of any employee or member
 39 by reason of the employee's or member's termination of
 40 employment, termination of membership in the class or
 41 classes eligible for coverage under the policy, or death, the
 42 spouse shall be entitled to have issued by the insurer,
 43 without evidence of insurability, an individual policy of
 44 life insurance without disability or other supplementary
 45 benefits, providing application for the individual policy
 46 shall be made, and the first premium paid to the insurer,
 47 within thirty-one days after such termination, subject to
 48 the requirements of paragraphs (a), (b) and (c) of sec-
 49 tion sixteen of this article. If the group policy terminates
 50 or is amended so as to terminate the insurance of any
 51 class of employees or members and the employee or mem-
 52 ber is entitled to have issued an individual policy under
 53 section seventeen of this article, the spouse shall also be
 54 entitled to have issued by the insurer an individual policy,

55 subject to the conditions and limitations provided above.
56 If the spouse dies within the period during which he
57 would have been entitled to have an individual policy
58 issued in accordance with this provision, the amount of life
59 insurance which he would have been entitled to have
60 issued under such individual policy shall be payable as a
61 claim under the group policy, whether or not application
62 for the individual policy or the payment of the first
63 premium therefor has been made.

64 (d) Notwithstanding section fifteen of this article, only
65 one certificate need be issued for delivery to an insured
66 person if a statement concerning any dependent's cover-
67 age is included in such certificate.

Sec. 8. *Group Life Standard Provisions.*—(a) Except as
2 set forth in subsection (b), below, no policy of group life
3 insurance shall be delivered in this state unless it con-
4 tains in substance the standard provisions as required by
5 sections nine to eighteen, inclusive, of this article, or pro-
6 visions which in the opinion of the commissioner are more
7 favorable to the persons insured, or at least as favorable
8 to the persons insured and more favorable to the policy-
9 holder.

10 (b) The provisions of sections fourteen to eighteen,
11 inclusive, of this article shall not apply to policies issued
12 to a creditor to insure debtors of such creditor. The
13 standard provisions required for individual life insurance
14 policies shall not apply to group life insurance policies.
15 If the group life insurance policy is on a plan of insurance
16 other than the term plan, it shall contain a nonforfeiture
17 provision or provisions which in the opinion of the com-
18 missioner is or are equitable to the insured persons and
19 to the policyholder, but nothing herein shall be construed
20 to require that group life insurance policies contain the
21 same nonforfeiture provisions as are required for indi-
22 vidual life insurance policies.

Sec. 9. *Grace Period.*—In group life policies there shall
2 be a provision that the policyholder is entitled to a grace
3 period of thirty-one days for the payment of any premium
4 due except the first, during which grace period the death

5 benefit coverage shall continue in force, unless the policy-
6 holder shall have given the insurer written notice of dis-
7 continuance in advance of the date of discontinuance and
8 in accordance with the terms of the policy. The policy
9 may provide that the policyholder shall be liable to the
10 insurer for the payment of a pro rata premium for the
11 time the policy was in force during such grace period.

Sec. 10. *Incontestability.*—In group life policies there
2 shall be a provision that the validity of the policy shall
3 not be contested, except for nonpayment of premiums,
4 after it has been in force for two years from its date of
5 issue; and that no statement made by any person insured
6 under the policy relating to his insurability shall be used
7 in contesting the validity of the insurance with respect to
8 which such statement was made after such insurance has
9 been in force prior to the contest for a period of two years
10 during such person's lifetime nor unless it is contained in
11 a written instrument signed by him.

Sec. 11. *Application; Representations.*—In group life
2 policies there shall be a provision that a copy of the appli-
3 cation, if any, of the policyholder shall be attached to the
4 policy when issued, that all statements made by the
5 policyholder or by the persons insured shall be deemed
6 representations and not warranties, and that no state-
7 ment made by any person insured shall be used in any
8 contest unless a copy of the instrument containing the
9 statement is or has been furnished to such person or to
10 his beneficiary.

Sec. 12. *Insurability.*—In group life policies there shall
2 be a provision setting forth the conditions, if any, under
3 which the insurer reserves the right to require a person
4 eligible for insurance to furnish evidence of individual
5 insurability satisfactory to the insurer as a condition to
6 part or all of his coverage.

Sec. 13. *Misstatement of Age.*—In group life policies
2 there shall be a provision specifying an equitable adjust-
3 ment of premiums or of benefits or of both to be made in
4 the event the age of a person insured has been misstated,

5 such provision to contain a clear statement of the method
6 of adjustment to be used.

Sec. 14. *Beneficiary.*—In group life policies there shall
2 be a provision that any sum becoming due by reason of
3 the death of the person insured shall be payable to the
4 beneficiary designated by the person insured, subject to
5 the provisions of the policy in the event there is no desig-
6 nated beneficiary, as to all or any part of such sum, living
7 at the death of the person insured, and subject to any
8 right reserved by the insurer in the policy and set forth
9 in the certificate to pay at its option a part of such sum
10 not exceeding five hundred dollars to any person appear-
11 ing to the insurer to be equitably entitled thereto by rea-
12 son of having incurred funeral or other expenses incident
13 to the last illness or death of the person insured.

Sec. 15. *Certificates.*—In group life policies there shall
2 be a provision that the insurer will issue to the policy-
3 holder for delivery to each person insured an individual
4 certificate setting forth a statement as to the insurance
5 protection to which he is entitled, to whom the insurance
6 benefits are payable, and the rights and conditions set
7 forth in sections sixteen, seventeen, and eighteen of this
8 article.

Sec. 16. *Conversion on Termination of Eligibility.*—In
2 group life policies there shall be a provision that if the
3 insurance, or any portion of it, on a person covered under
4 the policy, other than the child of an employee insured
5 pursuant to section seven of this article, ceases because of
6 termination of employment or of membership in the class
7 or classes eligible for coverage under the policy, such per-
8 son shall be entitled to have issued to him by the insurer,
9 without evidence of insurability, an individual policy of
10 life insurance without disability or other supplementary
11 benefits, provided application for the individual policy
12 shall be made, and the first premium paid to the insurer,
13 within thirty-one days after such termination: *Provided*
14 *further, That*

15 (a) The individual policy shall, at the option of such
16 person, be on any one of the forms of insurance then

17 customarily issued by the insurer, except term insurance,
18 at the age and for the amount applied for, except that
19 there shall be available to a person whose term insurance
20 under the group policy ceases, as provided above, pre-
21 liminary or interim term insurance for not more than one
22 year from such termination;

23 (b) The individual policy shall be in an amount not in
24 excess of the amount of life insurance which ceases
25 because of such termination, provided that any amount of
26 insurance which shall have matured on or before the date
27 of such termination as an endowment payable to the per-
28 son insured, whether in one sum or in instalments or in
29 the form of an annuity, shall not, for the purposes of this
30 provision, be included in the amount which is considered
31 to cease because of such termination; and

32 (c) The premium on the individual policy shall be at
33 the insurer's then customary rate applicable to the form
34 and amount of the individual policy, to the class of risk to
35 which such person then belongs, and to his age attained
36 on the effective date of the individual policy.

Sec. 17. *Conversion on Termination of Policy.*—In group
2 life policies there shall be a provision that if the group
3 policy terminates or is amended so as to terminate the
4 insurance of any class of insured persons, every person
5 insured thereunder at the date of such termination, other
6 than a child of an employee insured pursuant to section
7 seven of this article, whose insurance terminates and who
8 has been so insured for at least three years under a group
9 policy issued five years or more prior to such termination
10 date, shall be entitled to have issued to him by the insurer
11 an individual policy of life insurance, subject to the same
12 conditions and limitations as are provided by section six-
13 teen of this article, except that term insurance shall not
14 be available and, except that the group policy may provide
15 that the amount of such individual policy shall not exceed
16 the smaller of (a) the amount of the person's life insur-
17 ance protection ceasing because of the termination or
18 amendment of the group policy, less the amount of any
19 life insurance for which he is or becomes eligible under
20 any group policy issued or reinstated by the same or

21 another insurer within thirty-one days after such termi-
22 nation, and (b) two thousand dollars.

Sec. 18. *Death Pending Conversion.*—In group life poli-
2 cies there shall be a provision that if a person insured
3 under the group policy dies during the period within
4 which he would have been entitled to have an individual
5 policy issued to him in accordance with sections sixteen
6 and seventeen of this article and before such an individual
7 policy shall have become effective, the amount of life
8 insurance which he would have been entitled to have
9 issued to him under such individual policy shall be pay-
10 able as a claim under the group policy, whether or not
11 application for the individual policy or the payment of
12 the first premium therefor has been made.

Sec. 19. *Certificate or Statement of Coverage to Debtor.*
2 —In the case of a group life policy issued to a creditor to
3 insure debtors of such creditor, there shall be a provision
4 in such policy that the insurer will furnish to the policy-
5 holder for delivery to each debtor insured under the policy
6 a certificate or statement of coverage form which shall
7 contain a statement that the life of the debtor is insured
8 under the policy and that any death benefit paid there-
9 under by reason of his death shall be applied to reduce or
10 extinguish the indebtedness.

Sec. 20. *Notice of Conversion Rights.*—If any individual
2 insured under a group life insurance policy hereafter de-
3 livered in this state becomes entitled under the terms of
4 such policy to have an individual policy of life insurance
5 issued to him without evidence of insurability, subject to
6 making of application and payment of the first premium
7 within the period specified in such policy, and if such
8 individual is not given notice of the existence of such
9 right at least fifteen days prior to the expiration date of
10 such period, then, in such event the individual shall have
11 an additional period within which to exercise such right,
12 but nothing contained in this section shall be construed
13 to continue any insurance beyond the period provided in
14 such policy. Such additional period shall expire fifteen
15 days next after the individual is given such notice but

16 in no event shall such additional period extend beyond
17 sixty days next after the expiration date of the period
18 provided in such policy. Written notice presented to the
19 individual or mailed by the policyholder to the last known
20 address of the individual or mailed by the insurer to the
21 last known address of the individual as furnished by the
22 policyholder shall constitute notice for the purpose of this
23 section.

Sec. 21. *Application of Dividends; Rate Reductions.*—

2 Any policy dividends hereafter declared, or reduction in
3 rate of premiums hereafter made or continued for the
4 first or any subsequent year of insurance, under any policy
5 of group life insurance heretofore or hereafter issued to
6 any policyholder may be applied to reduce the policy-
7 holder's part of the cost of such insurance, except that if
8 the aggregate dividends or refunds or credits under such
9 group life policy and any other group policy or contract
10 issued to the policyholder exceed the aggregate contribu-
11 tions of the policyholder toward the cost of the coverages,
12 including expenditures made in connection with adminis-
13 tration of such policies, such excess shall be applied by the
14 policyholder for the sole benefit of insured employees or
15 members.

Sec. 22. *Group Annuity Contracts—Standard Provi-*

2 *sions.*—No group annuity contract shall be delivered or
3 issued for delivery in this state and no certificate shall be
4 used in connection therewith unless it contains in sub-
5 stance the provisions set forth in sections twenty-three to
6 twenty-seven, inclusive, of this article, to the extent that
7 such provisions are applicable to such contract or to such
8 certificate, as the case may be, or provisions which in the
9 opinion of the commissioner are more favorable to annuit-
10 ants, or not less favorable to annuitants and more favor-
11 able to the holders.

Sec. 23. *Same—Grace Period.*—In group annuity con-

2 tracts there shall be a provision that there shall be a
3 period of grace of thirty-one days within which any stipu-
4 lated payment to be remitted by the holder to the insurer,
5 falling due after one year from date of issue, may be made,

6 subject, at the option of the insurer, to an interest charge
7 thereon at a rate to be specified in the contract, which
8 shall not exceed six percent per annum for the number
9 of days of grace elapsing before such payment.

2 **Sec. 24. Same—Entire Contract.**—In group annuity con-
3 tracts there shall be a provision specifying the document
4 or documents which shall constitute the entire contract
5 between parties. The document or documents so specified
6 shall be only (a) the contract, (b) the contract together
7 with the application of the holder of which a copy is at-
8 tached thereto, or (c) the contract together with the ap-
9 plication of the holder of which a copy is attached thereto,
10 and the individual applications of annuitants on file with
the insurer and referred to therein.

2 **Sec. 25. Same—Misstatements.**—In group annuity con-
3 tracts there shall be a provision, with an appropriate
4 reference thereto in the certificate, for the equitable
5 adjustment of the benefits payable under the contract
6 or of the stipulated payments thereunder, if it be found
7 that the sex, age, service, salary or any other fact deter-
8 mining the amount of any stipulated payment or the
9 amount or date or dates of payment of any benefit with
10 respect to any annuitant covered thereby has been mis-
stated.

2 **Sec. 26. Same—Termination Benefits.**—In group annuity
3 contracts there shall be a provision or provisions, with
4 an appropriate reference thereto in the certificate, speci-
5 fying the nature and basis of ascertainment of the
6 benefits which will be available to an annuitant who
7 contributes to the cost of the annuity and the conditions
8 of payment thereof in the event of either the termina-
9 tion of employment of the annuitant, except by death,
10 or the discontinuance of stipulated payments under the
11 contract. Such provision or provisions shall, in either of
12 such events, make available to an annuitant who con-
13 tributed to the cost of the annuity a paid-up annuity pay-
14 able commencing at a fixed date in an amount at least
15 equal to that purchased by the contributions of the
16 annuitant, determinable as of the respective dates of pay-
ment of the several contributions, as shown by a schedule

17 in the contract for that purpose, based upon the same
18 mortality table, rate of interest and loading formula used
19 in computing the stipulated payments under such contract.
20 Such provision or provisions may, by way of exception
21 to the foregoing, provide that if the amount of the annuity
22 determined as aforesaid from such fixed commencement
23 date would be less than one hundred twenty dollars
24 annually, the insurer may at its option, in lieu of granting
25 such paid-up annuity, pay a cash surrender value at least
26 equal to that hereinafter provided.

27 If a cash surrender value, in lieu of such paid-up
28 annuity, is allowed to the annuitant by the terms of such
29 contract, it may be either in a single sum or in equal
30 instalments over a period of not more than twelve months
31 and it shall at least equal either (a) or (b), whichever is
32 less:

33 (a) The amount of reserve attributable to the annuitant's
34 contributions less a surrender charge not exceeding
35 thirty-five percent of the average annual contribution
36 made by the annuitant; or

37 (b) The amount which would be payable as a death
38 benefit at the date of surrender.

39 Such contract shall also provide that in case of the death
40 of an annuitant before the commencement date of the
41 annuity, the insurer shall pay a death benefit at least
42 equal to the aggregate amount of the annuitant's contri-
43 butions without interest. If any benefits are available to
44 the holder in either of such events, the contract shall
45 contain a provision or provisions specifying the nature
46 and basis of ascertainment of such benefits.

2 *Sec. 27. Same—Group Annuity Certificates.*—In group
3 annuity contracts there shall be a provision that the in-
4 surer will issue to the holder of the contract for delivery
5 to each annuitant who contributes thereunder an indi-
6 vidual certificate setting forth a statement in substance of
6 the benefits to which he is entitled under such contract.

Article 15. Accident and Sickness Insurance

Section

1. Scope of article.
2. Scope and format of policy.
3. Age limit.

4. Required policy provisions.
5. Optional policy provisions.
6. Inapplicable or inconsistent provisions.
7. Order of certain provisions.
8. Third party ownership.
9. Requirements of other jurisdictions.
10. Franchise insurance.

Section 1. *Scope of Article.*—Nothing in this article shall apply to or affect:

(a) Any policy of liability or workmen's compensation insurance.

(b) Any group accident and sickness policy issued in accordance with article sixteen of this chapter.

(c) Life insurance (including endowment or annuity contracts), or contracts supplemental thereto, which contain only such provisions relating to accident and sickness insurance as (1) provide additional benefits in case of death by accidental means, or as (2) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured shall become totally and permanently disabled as defined by the contract or supplemental contract.

(d) Reinsurance.

Sec. 2. *Scope and Format of Policy.*—No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

(a) The entire money and other considerations therefor are expressed therein; and

(b) The time at which the insurance takes effect and terminates is expressed therein; and

(c) It purports to insure only one person, except that a policy may insure, originally or by subsequent amendment upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder; and

(d) The style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the

18 text, and unless every printed portion of the text of the
19 policy and of any endorsements or attached papers is
20 plainly printed in light-faced type of a style in general
21 use, the size of which shall be uniform and not less than
22 ten-point with a lower-case unspaced alphabet length not
23 less than one hundred and twenty-point (the "text" shall
24 include all printed matter except the name and address
25 of the insurer, name or title of the policy, the brief
26 description, if any, and captions and subcaptions), the
27 policy shall clearly indicate on the first page its optionally
28 renewable nature; and

29 (e) The exceptions and reductions of indemnity are set
30 forth in the policy and, except those which are set forth
31 in sections four and five of this article, are printed, at
32 the insurer's option, either included with the benefit pro-
33 vision to which they apply, or under an appropriate
34 caption such as "Exceptions", or "Exceptions and Re-
35 ductions": *Provided*, That if an exception or reduction
36 specifically applies only to a particular benefit of the
37 policy, a statement of such exception or reduction shall
38 be included with the benefit provision to which it applies;
39 and

40 (f) Each such form, including riders and endorsements,
41 shall be identified by a form number in the lower left-
42 hand corner of the first part thereof; and

43 (g) It contains no provision purporting to make any
44 portion of the charter, rules, constitution, or by-laws of
45 the insurer a part of the policy unless such portion is set
46 forth in full in the policy, except in the case of the in-
47 corporation of, or reference to, a statement of rates or
48 classification of risks, or short-rate table filed with the
49 commissioner.

Sec. 3. *Age Limit.*—If any such policy contains a pro-
2 vision establishing as an age limit or otherwise, a date
3 after which the coverage provided by the policy will not
4 be effective, and if such date falls within a period for
5 which premium is accepted by the insurer or if the insurer
6 accepts a premium after such date, the coverage provided
7 by the policy will continue in force until the end of the
8 period for which premium has been accepted. In the

9 event the age of the insured has been misstated and if,
10 according to the correct age of the insured, the coverage
11 provided by the policy would not have become effective,
12 or would have ceased prior to the acceptance of such
13 premium or premiums, then the liability of the insurer
14 shall be limited to the refund, upon request, of all pre-
15 miums paid for the period not covered by the policy.

Sec. 4. *Required Policy Provisions.*—Except as provided
2 in section six of this article, each such policy delivered
3 or issued for delivery to any person in this state shall
4 contain the provisions specified in this section in the
5 words in which the same appear in this section: *Pro-*
6 *vided, however,* That the insurer may, at its option, sub-
7 stitute for one or more of such provisions corresponding
8 provisions of the different wording approved by the com-
9 missioner which are in each instance not less favorable
10 in any respect to the insured or the beneficiary. Such
11 provisions shall be preceded individually by the caption
12 appearing in this section or, at the option of the insurer,
13 by such appropriate individual or group captions or sub-
14 captions as the commissioner may approve.

15 (a) A provision as follows:

16 “Entire Contract; Changes: This policy, including the
17 endorsements and the attached papers, if any, constitutes
18 the entire contract of insurance. No change in this policy
19 shall be valid until approved by an executive officer of
20 the insurer and unless such approval be endorsed hereon
21 or attached hereto. No agent has authority to change this
22 policy or to waive any of its provisions.”

23 (b) A provision as follows:

24 “Time Limit on Certain Defenses: (1) After two years
25 from the date of issue of this policy no misstatements,
26 except fraudulent misstatements, made by the applicant
27 in the application for such policy shall be used to void
28 the policy or to deny a claim for loss incurred or disability
29 (as defined in the policy) commencing after the expira-
30 tion of such two year period.”

31 The foregoing policy provision shall not be so construed
32 as to affect any legal requirement for avoidance of a

33 policy or denial of a claim during such initial two year
34 period, nor to limit the application of clauses (a), (b),
35 (c), (d) and (e) of section five of this article in the event
36 of misstatement with respect to age or occupation or other
37 insurance. A policy which the insured has the right to
38 continue in force subject to its terms by the timely pay-
39 ment of premium (i) until at least age fifty, or (ii) in
40 the case of a policy issued after age forty-four, for at
41 least five years from its date of issue, may contain in lieu
42 of the foregoing the following provision (from which the
43 clause in parentheses may be omitted at the insurer's
44 option) under the caption "Incontestable":

45 "After this policy has been in force for a period of two
46 years during the lifetime of the insured (excluding any
47 period during which the insured is disabled), it shall be-
48 come incontestable as to the statements contained in the
49 application.

50 "(2) No claim for loss incurred or disability (as defined
51 in the policy) commencing after two years from the date
52 of issue of this policy shall be reduced or denied on the
53 ground that a disease or physical condition not excluded
54 from coverage by name or specific description effective
55 on the date of loss had existed prior to the effective date
56 of coverage of this policy."

57 (c) A provision as follows:

58 "Grace Period: A grace period of (insert a
59 number not less than '7' for weekly premium policies,
60 '10' for monthly premium policies and '31' for all other
61 policies) days will be granted for the payment of each
62 premium falling due after the first premium, during which
63 grace period the policy shall continue in force."

64 A policy in which the insurer reserves the right to
65 refuse renewal shall have at the beginning of the above
66 provision, "Unless not less than thirty days prior to the
67 premium due date the insurer has delivered to the in-
68 sured or has mailed to his last address as shown by the
69 records of the insurer written notice of its intention not
70 to renew this policy beyond the period for which the
71 premium has been accepted. . . ."

72 (d) A provision as follows:

73 "Reinstatement: If any renewal premium be not paid
74 within the time granted the insured for payment, a sub-
75 sequent acceptance of premium by the insurer or by any
76 agent duly authorized by the insurer to accept such
77 premium, without requiring in connection therewith an
78 application for reinstatement, shall reinstate the policy:
79 *Provided, however,* That if the insurer or such agent re-
80 quires an application for reinstatement and issues a con-
81 ditional receipt for the premium tendered, the policy will
82 be reinstated upon approval of such application by the
83 insurer or, lacking such approval, upon the forty-fifth
84 day following the date of such conditional receipt unless
85 the insurer has previously notified the insured in writing
86 of its disapproval of such application. The reinstated
87 policy shall cover only loss resulting from such accidental
88 injury as may be sustained after the date of reinstate-
89 ment and loss due to such sickness as may begin more
90 than ten days after such date. In all other respects the
91 insured and insurer shall have the same rights thereun-
92 der as they had under the policy immediately before the
93 due date of the defaulted premium, subject to any pro-
94 visions endorsed hereon or attached hereto in connection
95 with the reinstatement. Any premium accepted in con-
96 nection with a reinstatement shall be applied to a period
97 for which premium has not been previously paid, but not
98 to any period more than sixty days prior to the date of
99 reinstatement."

100 The last sentence of the above provision may be omitted
101 from any policy which the insured has the right to con-
102 tinue in force subject to its terms by the timely payment
103 of premiums (1) until at least age fifty, or, (2) in the case
104 of a policy issued after age forty-four, for at least five
105 years from its date of issue.

106 (e) A provision as follows:

107 "Notice of Claim: Written notice of claim must be
108 given to the insurer within twenty days after the occur-
109 rence or commencement of any loss covered by the policy,
110 or as soon thereafter as is reasonably possible. Notice
111 given by or on behalf of the insured or the beneficiary

112 to the insurer at..... (insert the location of such
113 office as the insurer may designate for the purpose), or
114 to any authorized agent of the insurer, with information
115 sufficient to identify the insured, shall be deemed notice
116 to the insurer."

117 In a policy providing a loss-of-time benefit which may
118 be payable for at least two years, an insurer may at its
119 option insert the following between the first and second
120 sentences of the above provision:

121 "Subject to the qualifications set forth below, if the
122 insured suffers loss of time on account of disability for
123 which indemnity may be payable for at least two years,
124 he shall, at least once in every six months after having
125 given notice of claim give to the insurer notice of con-
126 tinuance of said disability, except in the event of legal
127 incapacity. The period of six months following any filing
128 of proof by the insured or any payment by the insurer
129 on account of such claim or any denial of liability in
130 whole or in part by the insurer shall be excluded in
131 applying this provision. Delay in the giving of such
132 notice shall not impair the insured's right to any indem-
133 nity which would otherwise have accrued during the pe-
134 riod of six months preceding the date on which such
135 notice is actually given."

136 (f) A provision as follows:

137 "Claim Forms: The insurer, upon receipt of a notice of
138 claim, will furnish to the claimant such forms as are
139 usually furnished by it for filing proofs of loss. If such
140 forms are not furnished within fifteen days after the
141 giving of such notice the claimant shall be deemed to have
142 complied with the requirements of this policy as to proof
143 of loss upon submitting, within the time fixed in the
144 policy for filing proofs of loss, written proof covering the
145 occurrence, the character and the extent of the loss for
146 which claim is made."

147 (g) A provision as follows:

148 "Proof of Loss: Written proof of loss must be furnished
149 to the insurer at its said office in case of claim for loss
150 for which this policy provides any periodic payment con-
151 tingent upon continuing loss within ninety days after the

152 termination of the period for which the insurer is liable
153 and in case of claim for any other loss within ninety days
154 after the date of such loss. Failure to furnish such proof
155 within the time required shall not invalidate nor reduce
156 any claim if it was not reasonably possible to give proof
157 within such time, provided such proof is furnished as
158 soon as reasonably possible and in no event, except in the
159 absence of legal capacity, later than one year from the
160 time proof is otherwise required.”

161 (h) A provision as follows:

162 “Time of Payment of Claims: Indemnities payable un-
163 der this policy for any loss other than loss for which this
164 policy provides any periodic payment will be paid im-
165 mediately upon receipt of due written proof of such loss.
166 Subject to due written proof of loss, all accrued indem-
167 nities for loss for which this policy provides periodic pay-
168 ment will be paid (insert period for payment
169 which must not be less frequently than monthly) and
170 any balance remaining unpaid upon the termination of
171 liability will be paid immediately upon receipt of due
172 written proof.”

173 (i) A provision as follows:

174 “Payment of Claims: Indemnity for loss of life will be
175 payable in accordance with the beneficiary designation
176 and the provisions respecting such payment which may
177 be prescribed herein and effective at the time of payment.
178 If no such designation or provision is then effective, such
179 indemnity shall be payable to the estate of the insured.
180 Any other accrued indemnities unpaid at the insured’s
181 death may, at the option of the insurer, be paid either
182 to such beneficiary or to such estate. All other indemnities
183 will be payable to the insured.”

184 The following provisions, or either of them, may be
185 included with the foregoing provisions at the option of
186 the insurer:

187 “If any indemnity of this policy shall be payable to the
188 estate of the insured, or to an insured or beneficiary who
189 is a minor or otherwise not competent to give a valid
190 release, the insurer may pay such indemnity, up to an
191 amount not exceeding \$ (insert an amount

192 which shall not exceed one thousand dollars), to any
193 relative by blood or connection by marriage of the insured
194 or beneficiary who is deemed by the insurer to be equita-
195 bly entitled thereto. Any payment made by the insurer
196 in good faith pursuant to this provision shall fully dis-
197 charge the insurer to the extent of such payment.

198 "Subject to any written direction of the insured in the
199 application or otherwise all or a portion of any indem-
200 nities provided by this policy on account of hospital
201 nursing, medical, or surgical services may, at the insurer's
202 option and unless the insured requests otherwise in writ-
203 ing not later than the time of filing proofs of such loss,
204 be paid directly to the hospital or person rendering such
205 services; but it is not required that the service be ren-
206 dered by a particular hospital or person."

207 (j) A provision as follows:

208 "Physical Examinations and Autopsy: The insurer at
209 its own expense shall have the right and opportunity to
210 examine the person of the insured when and as often
211 as it may reasonably require during the pendency of a
212 claim hereunder and to make an autopsy in case of death
213 where it is not forbidden by law."

214 (k) A provision as follows:

215 "Legal Actions: No action at law or in equity shall
216 be brought to recover on this policy prior to the expira-
217 tion of sixty days after written proof of loss has been
218 furnished in accordance with the requirements of this
219 policy. No such action shall be brought after the expira-
220 tion of three years after the time written proof of loss is
221 required to be furnished."

222 (1) A provision as follows:

223 "Change of Beneficiary: Unless the insured makes
224 an irrevocable designation of beneficiary, the right to
225 change of beneficiary is reserved to the insured and the
226 consent of the beneficiary or beneficiaries shall not be
227 requisite to surrender or assignment of this policy or to
228 any change of beneficiary or beneficiaries, or to any other
229 changes in this policy."

230 The first clause of this provision, relating to the irrevocable

231 cable designation of beneficiary, may be omitted at the
232 insurer's option.

233 (m) In addition each policy, except accident insurance
234 only policies, in which the insurer reserves the right to
235 refuse renewal on an individual basis shall provide, in
236 substance, in a provision thereof or in an endorsement
237 thereon or in a rider attached thereto (entitled "Renew-
238 ability"), that subject to the right to terminate the policy
239 upon nonpayment of premiums when due, such right to
240 refuse renewal shall not be exercised before the renewal
241 date occurring on, or after and nearest, each anniversary,
242 or in the case of lapse and reinstatement at the renewal
243 date occurring on, or after and nearest, each anniversary
244 of the last reinstatement, and that any refusal of renewal
245 shall be without prejudice to any claim originating while
246 the policy is in force.

Sec. 5. *Optional Policy Provisions.*—Except as provided
2 in section six of this article, no such policy delivered
3 or issued for delivery to any person in this state shall
4 contain provisions respecting the matters set forth below
5 unless such provisions are in the words in which the
6 same appear in this section: *Provided, however,* That the
7 insurer may, at its option, use in lieu of any such pro-
8 vision a corresponding provision of different wording ap-
9 proved by the commissioner which is not less favorable
10 in any respect to the insured or the beneficiary. Any such
11 provision contained in the policy shall be preceded indi-
12 vidually by the appropriate caption appearing in this
13 section or, at the option of the insurer, by such appro-
14 priate individual or group captions or subcaptions as the
15 commissioner may approve.

16 (a) A provision as follows:

17 "Change of Occupation: If the insured be injured or
18 contract sickness after having changed his occupation to
19 one classified by the insurer as more hazardous than that
20 stated in this policy or while doing for compensation
21 anything pertaining to an occupation so classified, the
22 insurer will pay only such portion of the indemnities
23 provided in this policy as the premium paid would have
24 purchased at the rates and within the limits fixed by the

25 insurer for such more hazardous occupation. If the in-
26 sured changes his occupation to one classified by the
27 insurer as less hazardous than that stated in this policy,
28 the insurer, upon receipt of proof of such change of occu-
29 pation, will reduce the premium rate accordingly, and
30 will return the excess pro rata unearned premium from
31 the date of change of occupation or from the policy anni-
32 versary date immediately preceding receipt of such proof,
33 whichever is the more recent. In applying this provision,
34 the classification of occupational risk and the premium
35 rates shall be such as have been last filed by the insurer
36 prior to the occurrence of the loss for which the insurer
37 is liable or prior to date of proof of change in occupation
38 with the state official having supervision of insurance
39 in the state where the insured resided at the time this
40 policy was issued; but if such filing was not required,
41 then the classification of occupational risk and the pre-
42 mium rates shall be those last made effective by the
43 insurer in such state prior to the occurrence of the loss
44 or prior to the date of proof of change in occupation."

45 (b) A provision as follows:

46 "Misstatement of Age: If the age of the insured has
47 been misstated, all amounts payable under this policy
48 shall be such as the premium paid would have purchased
49 at the correct age."

50 (c) A provision as follows:

51 "Other Insurance in This Insurer: If an accident or
52 sickness or accident and sickness policy or policies pre-
53 viously issued by the insurer to the insured be in force
54 concurrently herewith, making the aggregate indemnity
55 for (insert type of coverage or coverages) in
56 excess of \$ (insert maximum limit of indemnity
57 or indemnities) the excess insurance shall be void and all
58 premiums paid for such excess shall be returned to the
59 insured or to his estate."

60 Or, in lieu thereof:

61 "Insurance effective at any one time on the insured
62 under a like policy or policies in this insurer is limited
63 to the one such policy elected by the insured, his bene-

64 ficiary or his estate, as the case may be, and the insurer
65 will return all premiums paid for all other such policies.”

66 Provided that no policy hereafter issued for delivery
67 in this state which provides, with or without other bene-
68 fits, for the payment of benefits or reimbursement for
69 expenses with respect to hospitalization, nursing care,
70 medical or surgical examination or treatment, or ambu-
71 lance transportation shall contain any provision for a
72 reduction of such benefits or reimbursement, or any pro-
73 vision for avoidance of the policy, on account of other
74 insurance of such nature carried by the same insured
75 with the same or another insurer.

76 (d) A provision as follows:

77 “Insurance with Other Insurers: If there be other valid
78 coverage, not with this insurer, providing benefits for
79 the same loss on other than an expense incurred basis
80 and of which this insurer has not been given written
81 notice prior to the occurrence or commencement of loss,
82 the only liability for such benefits under this policy shall
83 be for such proportion of the indemnities otherwise pro-
84 vided hereunder for such loss as the like indemnities of
85 which the insurer had notice (including the indemnities
86 under this policy) bear to the total amount of all like
87 indemnities for such loss, and for the return of such por-
88 tion of the premium paid as shall exceed the pro rata
89 portion for the indemnities thus determined.”

90 The insurer may, at its option, include in this provision
91 a definition of “other valid coverage”, approved as to
92 form by the commissioner, which definition shall be
93 limited in subject matter to coverage provided by organi-
94 zations subject to regulation by insurance law or by in-
95 surance authorities of this or any other state of the United
96 States or any province of Canada, and to any other cov-
97 erage the inclusion of which may be approved by the
98 commissioner. In the absence of such definition such term
99 shall not include group insurance, or benefits provided
100 by union welfare plans or by employer or employee
101 benefit organizations. For the purpose of applying the
102 foregoing policy provision with respect to any insured
103 any amount of benefit provided for such insured pursuant

104 to any compulsory benefit statute (including any work-
105 men's compensation or employer's liability statute)
106 whether provided by a governmental agency or other-
107 wise shall in all cases be deemed to be "other valid cover-
108 age" of which the insurer has had notice. In applying the
109 foregoing policy provision no third party liability cover-
110 age shall be included as "other valid coverage."

111 (e) A provision as follows:

112 "Relation of Earnings to Insurance: If the total monthly
113 amount of loss of time benefits promised for the same
114 loss under all valid loss of time coverage upon the in-
115 sured, whether payable on a weekly or monthly basis,
116 shall exceed the monthly earnings of the insured at the
117 time disability commenced or his average monthly earn-
118 ings for the period of two years immediately preceding
119 a disability for which claim is made, whichever is the
120 greater, the insurer will be liable only for such propor-
121 tionate amount of such benefits under this policy as the
122 amount of such monthly earnings or such average monthly
123 earnings of the insured bears to the total amount of
124 monthly benefits for the same loss under all such cover-
125 age upon the insured at the time such disability com-
126 mences and for the return of such part of the premiums
127 paid during such two years as shall exceed the pro rata
128 amount of the premiums for the benefits actually paid
129 hereunder; but this shall not operate to reduce the total
130 monthly amount of benefits payable under all such cover-
131 age upon the insured below the sum of two hundred
132 dollars or the sum of the monthly benefits specified in
133 such coverages, whichever is the lesser, nor shall it op-
134 erate to reduce benefits other than those payable for loss
135 of time."

136 The foregoing policy provision may be inserted only
137 in a policy which the insured has the right to continue
138 in force subject to its terms by the timely payment of
139 premiums (1) until at least age fifty or, (2) in the case
140 of a policy issued after age forty-four, for at least five
141 years from its date of issue. The insurer may, at its op-
142 tion, include in this provision a definition of "valid loss
143 of time coverage", approved as to form by the commis-

144 sioner, which definition shall be limited in subject matter
145 to coverage provided by governmental agencies or by
146 organizations subject to regulation by insurance law or
147 by insurance authorities of this or any other state of the
148 United States or any province of Canada, or to any other
149 coverage the inclusion of which may be approved by the
150 commissioner or any combination of such coverages. In
151 the absence of such definition such term shall not include
152 any coverage provided for such insured pursuant to any
153 compulsory benefit statute (including any workmen's
154 compensation or employer's liability statute), or benefits
155 provided by union welfare plans or by employer or em-
156 ployee benefit organizations.

157 (f) A provision as follows:

158 "Unpaid Premium: Upon the payment of a claim under
159 this policy, any premiums then due and unpaid or covered
160 by any note or written order may be deducted there-
161 from."

162 (g) A provision as follows:

163 "Return of Premium on Cancellation: If the insured
164 cancels this policy, the earned premium shall be com-
165 puted by the use of the short-rate table last filed with the
166 state official having supervision of insurance in the state
167 where the insured resided when the policy was issued.
168 Cancellation shall be without prejudice to any claim
169 originating prior to the effective date of cancellation."

170 (h) A provision as follows:

171 "Conformity with State Statutes: Any provision of this
172 policy which, on its effective date, is in conflict with the
173 statutes of the state in which the insured resides on such
174 date is hereby amended to conform to the minimum re-
175 quirements of such statutes."

176 (i) A provision as follows:

177 "Illegal Occupation: The insurer shall not be liable for
178 any loss to which a contributing cause was the insured's
179 commission of or attempt to commit a felony or to which
180 a contributing cause was the insured's being engaged in
181 an illegal occupation."

182 (j) A provision as follows:

183 "Intoxicants and Narcotics: The insurer shall not be

184 liable for any loss sustained or contracted in consequence
185 of the insured's being intoxicated or under the influence
186 of any narcotic unless administered on the advice of a
187 physician."

Sec. 6. *Inapplicable or Inconsistent Provisions.*—If any
2 provision of this article is in whole or in part inapplicable
3 to or inconsistent with the coverage provided by a par-
4 ticular form of policy, the insurer, with the approval of
5 the commissioner, shall omit from such policy any in-
6 applicable provision or part of a provision, and shall
7 modify any inconsistent provision or part of the provision
8 in such manner as to make the provision as contained in
9 the policy consistent with the coverage provided by the
10 policy.

Sec. 7. *Order of Certain Provisions.*—The provisions
2 which are the subject of sections four and five of this
3 article or any corresponding provisions which are used
4 in lieu thereof in accordance with such sections, shall be
5 printed in consecutive order of the provisions in such
6 sections or, at the option of the insurer, any such pro-
7 visions may appear as a unit in any part of the policy,
8 with other provisions to which it may be logically re-
9 lated, provided the resulting policy shall not be in whole
10 or in part unintelligible, uncertain, ambiguous, abstruse,
11 or likely to mislead a person to whom the policy is offered,
12 delivered or issued.

Sec. 8. *Third Party Ownership.*—The word "insured"
2 as used in this article, shall not be construed as prevent-
3 ing a person other than the insured with a proper insur-
4 able interest from making application for and owning a
5 policy covering the insured or from being entitled under
6 such a policy to any indemnities, benefits and rights pro-
7 vided therein.

Sec. 9. *Requirements of Other Jurisdictions.*—(a) Any
2 policy of a foreign or alien insurer, when delivered or
3 issued for delivery to any person in this state, may con-
4 tain any provision which is not less favorable to the in-
5 sured or the beneficiary than the provisions of this article

6 and which is prescribed or required by the law of the
7 state under which the insurer is organized.

8 (b) Any policy of a domestic insurer may, when issued
9 for delivery in any other state or country, contain any
10 provision permitted or required by the laws of such other
11 state or country.

Sec. 10. *Franchise Insurance*.—Accident and sickness
2 insurance on a franchise plan is hereby declared to be
3 that form of accident and sickness insurance issued to:

4 (a) Five or more employees of any corporation, co-
5 partnership or individual employer or any governmental
6 corporation, agency or department thereof, or

7 (b) Five or more members of any trade or professional
8 association or of a labor union or of any other association
9 having had an active existence for at least two years
10 where such association or union has a constitution or by-
11 laws and is formed in good faith for purposes other than
12 that of obtaining insurance; where such persons, with or
13 without their dependents, are issued the same form of an
14 individual policy varying only as to amounts and kinds of
15 coverage applied for by such persons, under an arrange-
16 ment whereby the premiums on such policies may be paid
17 to the insurer periodically by the employer, with or with-
18 out payroll deductions, or by the association or union for
19 its members, or by some designated person acting on be-
20 half of such employer or association or union. The term
21 "employees" as used in this section shall be deemed to
22 include the officers, managers, employees and retired em-
23 ployees of the employer and the individual proprietor or
24 partners if the employer is an individual proprietor or
25 partnership.

Article 16. Group Accident and Sickness Insurance

Section

1. Scope of article.
2. Eligible groups.
3. Required policy provisions.
4. Size of type.
5. Expense reimbursement permitted.
6. Rider changing individual policy to group policy prohibited.

Section 1. *Scope of Article*.—(a) Nothing in this article
2 shall apply to or affect any policy of liability or work-

3 men's compensation insurance, or any policy of individual
4 accident and sickness insurance issued in accordance with
5 article fifteen of this chapter, or any policy issued by a
6 fraternal benefit society.

7 (b) Nothing in this article shall apply to or in any way
8 affect life insurance, endowment or annuity contracts or
9 contracts supplemental thereto which contain no pro-
10 visions relating to accident or sickness insurance except
11 (a) such as provide additional benefits in case of death
12 by accidental means and except (b) such as operate to
13 safeguard such contracts against lapse, or to give a special
14 surrender value or special benefit or an annuity in the
15 event that the insured or annuitant shall become totally
16 and permanently disabled as defined by the contract or
17 supplemental contract.

18 (c) No accident and sickness policy or certificate shall be
19 delivered or issued for delivery in this state insuring
20 more than one individual (subject to the same exceptions
21 provided for group life insurance in section one of article
22 fourteen of this chapter) unless to one of the groups set
23 forth in section two of this article and unless otherwise
24 in compliance with this article.

Sec. 2. *Eligible Groups.*—Any insurer licensed to trans-
2 act accident and sickness insurance in this state may issue
3 group accident and sickness policies coming within any
4 of the following classifications:

5 (a) A policy issued to an employer, who shall be deem-
6 ed the policyholder, insuring at least ten employees of
7 such employer, for the benefit of persons other than the
8 employer, and conforming to the following requirements:

9 (1) If the premium is paid by the employer the group
10 shall comprise all employees or all of any class or classes
11 thereof determined by conditions pertaining to the em-
12 ployment, or

13 (2) If the premium is paid by the employer and em-
14 ployees jointly, or by the employees, the group shall
15 comprise not less than seventy percent of all employees
16 of the employer or not less than seventy-five percent of

17 all employees of any class or classes thereof determined
18 by conditions pertaining to the employment.

19 (3) The term "employee" as used herein shall be deem-
20 ed to include the officers, managers, and employees of the
21 employer, the partners, if the employer is a partnership,
22 the officers, managers, and employees of subsidiary or
23 affiliated corporations of a corporation employer, and
24 the individual proprietors, partners and employees of
25 individuals and firms, the business of which is controlled
26 by the insured employer through stock ownership, con-
27 tract, or otherwise. The term "employer" as used herein
28 may be deemed to include any municipal or governmental
29 corporation, unit, agency or department thereof and the
30 proper officers, as such, of any unincorporated muni-
31 cipality or department thereof, as well as private indi-
32 viduals, partnerships and corporations.

33 (b) A policy issued to an association which has a con-
34 stitution and by-laws and which has been organized and
35 is maintained in good faith for purposes other than that
36 of obtaining insurance, insuring at least ten members of
37 the association for the benefit of persons other than the
38 association or its officers or trustees, as such;

39 (c) A policy issued to a college, school or other institu-
40 tion of learning or to the head or principal thereof, insur-
41 ing at least ten students, or students and employees, of
42 such institution;

43 (d) A policy issued to or in the name of any volunteer
44 fire department, insuring all of the members of such de-
45 partment or all of any class or classes thereof against any
46 one or more of the hazards to which they are exposed by
47 reason of such membership but in each case not less than
48 ten such members;

49 (e) A policy issued to any person or organization to
50 which a policy of group life insurance may be issued or
51 delivered in this state, to insure any class or classes of
52 individuals that could be insured under such group life
53 policy.

Sec. 3. *Required Policy Provisions.*—Each such policy
2 hereafter delivered or issued for delivery in this state
3 shall contain in substance the following provisions:

4 (a) A provision that the policy, the application of the
5 policyholder, a copy of which shall be attached to such
6 policy, and the individual applications, if any, submitted
7 in connection with such policy by the employees or mem-
8 bers, shall constitute the entire contract between the
9 parties, and that all statements made by any applicant or
10 applicants shall be deemed representations and not war-
11 ranties, and that no such statement shall void the insur-
12 ance or reduce benefits thereunder unless contained in a
13 written application.

14 (b) A provision that the insurer will furnish to the
15 policyholder, for delivery to each employee or member
16 of the insured group, an individual certificate setting forth
17 in substance the essential features of the insurance cover-
18 age of such employee or member and to whom benefits
19 thereunder are payable. If dependents are included in the
20 coverage, only one certificate need be issued for each
21 family unit.

22 (c) A provision that all new employees or members, as
23 the case may be, in the groups or classes eligible for
24 insurance, shall from time to time be added to such
25 groups or classes eligible to obtain such insurance in ac-
26 cordance with the terms of the policy.

27 (d) No provision relative to notice or proof of loss or
28 the time for paying benefits or the time within which suit
29 may be brought upon the policy shall be less favorable to
30 the insured than would be permitted in the case of an
31 individual policy by the provisions set forth in article
32 fifteen of this chapter.

Sec. 4. *Size of Type.*—Every printed portion of every
2 such policy shall be plainly printed in type of which the
3 face shall be not smaller than ten point, and the exceptions
4 shall be printed with the same prominence as the benefits
5 to which they apply.

Sec. 5. *Expense Reimbursement Permitted.*—Any such
2 policy may provide, in addition to such other indemnities,
3 if any, as are provided in the policy on account of sick-
4 ness or bodily injury or death of insured employees or
5 members by accident, for the payment of benefits or re-

6 imbursement for expenses with respect to any one or
7 more of the following contingencies: Hospitalization,
8 nursing care, medical or surgical examination or treat-
9 ment, or ambulance transportation, of insured employees
10 or members, or of their spouses or children, or of depend-
11 ents living with them.

Sec. 6. *Rider Changing Individual Policy to Group
2 Policy Prohibited.*—No endorsement or rider shall here-
3 after be used in this state to transform an individual
4 policy issued under article fifteen of this chapter into a
5 group policy.

Article 17. Fire and Marine Insurance

Section

1. Scope of article.
2. Standard fire policy.
3. Arrangement of policy.
4. Information as to insurer.
5. Provisions required by charter or laws of other states.
6. Riders; endorsements; additional perils.
7. Designation as standard policy; agent's name.
8. Approval of forms.
9. Total or partial fire loss.
10. Auditing and stamping office.

Section 1. *Scope of Article.*—This article shall apply to
2 fire insurance and marine insurance, except that it shall
3 not apply to reinsurance.

Sec. 2. *Standard Fire Policy.*—No policy of fire insur-
2 ance covering property located in West Virginia shall be
3 made, issued or delivered unless it conforms as to all pro-
4 visions and the sequence thereof with the basic policy
5 commonly known as the New York standard fire policy,
6 edition of one thousand nine hundred forty-three, which
7 is designated as the West Virginia standard fire policy;
8 except that with regard to multiple line coverages pro-
9 viding casualty insurance combined with fire insurance
10 this section shall not apply if the policy contains, with
11 respect to the fire portion thereof, language at least as
12 favorable to the insured as the applicable portions of the
13 standard fire policy and such multiple line policy has been
14 approved by the commissioner. As of the effective date
15 of this chapter, the commissioner shall file in his office,
16 and thereafter maintain on file in his office, a true copy of

17 such West Virginia standard fire policy, designated as
18 such and bearing the commissioner's authenticating certifi-
19 cate and signature and the date of filing. Provisions to
20 be contained on the first page of the policy may be re-
21 written, and rearranged to facilitate policy issuance and
22 to include matter which may otherwise properly be added
23 by endorsement. The standard fire insurance policy shall
24 not be required for casualty insurance, marine insurance
25 nor insurance on growing crops.

Sec. 3. *Arrangement of Policy.*—The pages of the stand-
2 arid fire insurance policy may be renumbered and the
3 format rearranged for convenience in the preparation of
4 individual contracts, and to provide space for the listing
5 of rates and premiums for coverages insured thereunder
6 or under endorsements attached or printed thereon, and
7 such other data as may be conveniently included for
8 duplication on daily reports for office records.

Sec. 4. *Information as to Insurer.*—There shall be
2 printed on such standard fire insurance policy the name
3 of the insurer or insurers issuing the policy, the location
4 of the home office or United States office of the insurer or
5 insurers, a statement whether such insurer or insurers be
6 stock corporations, mutual corporations, reciprocal insur-
7 ers, or otherwise, and there may be added thereto such
8 device or emblem as the insurer or insurers issuing such
9 policy may desire. If the policy is issued by a mutual or
10 reciprocal insurer having special regulations with respect
11 to the payment of assessments by the policyholder or sub-
12 scriber, such regulations shall be printed on the policy, and
13 any such insurer may print upon the policy such regula-
14 tions as may be appropriate to or required by its form of
15 organization. Any insurer organized under special charter
16 provisions may so indicate upon its policy, and may add a
17 statement of the plan under which it operates in this state.
18 There may be substituted for the word "company" a more
19 accurate descriptive term for the type of insurer. There
20 may also be added a statement of the group of insurers
21 with which the insurer is financially affiliated. In lieu of
22 the facsimile signatures of the president and secretary of
23 the insurer there may be used the name or names of such

24 officers or managers as are authorized to execute the con-
25 tract.

Sec. 5. *Provisions Required by Charter or Laws of
2 Other States.*—A domestic insurer may print in the stand-
3 ard fire policy any provisions which it is authorized or
4 required by law to insert therein; a foreign or alien
5 insurer may print in the policy any provision required by
6 its charter or deed of settlement, or by the laws of its
7 own state or country, not contrary to the laws of this
8 state.

Sec. 6. *Riders; Endorsements; Additional Perils.*—Ap-
2 propriate forms of additional contracts, riders or endorse-
3 ments, insuring against indirect or consequential loss or
4 damage, or against any one or more perils other than
5 those of fire and lightning, or providing coverage which
6 the insurer issuing the policy is authorized by the laws of
7 this state and by its license to assume or issue, may be
8 used in connection with the standard fire policy. Such
9 other perils or coverages may include those excluded in
10 the standard fire insurance policy, and may include any
11 of the perils or coverages permitted to be insured against
12 or issued by fire, marine and casualty insurers. Such
13 forms of contracts, riders and endorsements may contain
14 provisions and stipulations inconsistent with such stand-
15 ard fire insurance policy, if such provisions and stipula-
16 tions are applicable only to such additional coverage or
17 to the additional peril or perils insured against.

Sec. 7. *Designation as Standard Policy; Agent's Name.*—
2 There may be printed upon the standard fire policy the
3 words, "Standard Fire Insurance Policy for West Vir-
4 ginia", and there may be inserted before and after the
5 words "West Virginia" a designation of any state or
6 states in which such form of policy is standard. There
7 may be endorsed on any such policy the name, with the
8 word "agent" or "agents" and place of business, of any
9 insurance agent or agents, either by writing, printing,
10 stamping or otherwise.

Sec. 8. *Approval of Forms.*—(a) No fire or marine
2 policy, rider, or endorsement to be attached to any policy,

3 covering any risk located or to be performed in West
4 Virginia shall be delivered or issued for delivery in this
5 state unless either (1) filed with and approved by the
6 commissioner, or (2) conforms to applicable rules ap-
7 proved by the commissioner or is identical as to language
8 to a policy, rider or endorsement approved by the com-
9 missioner. If the use of any such form under the pro-
10 visions of clause (2) above by any insurer or by the mem-
11 bers and subscribers of any rating organization shall be
12 so extensive that in the opinion of the commissioner the
13 public interest requires, the commissioner may require
14 that such form be filed with him by such insurer or by
15 such rating organization on behalf of its members and
16 subscribers.

17 (b) The procedure for filing and approval or disap-
18 proval of forms under this section shall be that provided
19 in paragraphs (b), (c), (d), and (e) of section eight of
20 article six of this chapter. Grounds for disapproval shall
21 be those set forth in section nine of article six of this
22 chapter. Such filings may be made on behalf of any
23 insurer by a rating organization licensed as such under
24 the provisions of article twenty of this chapter. This sec-
25 tion shall not apply to ocean marine policies, riders or
26 endorsements, or to forms on specially rated inland marine
27 risks.

Sec. 9. *Total or Partial Fire Loss.*—All insurers issuing
2 policies providing fire insurance on real property situate
3 in West Virginia, shall be liable, in case of total loss by
4 fire or otherwise, as stated in the policy, for the whole
5 amount of insurance stated in the policy, upon such real
6 property; and in case of partial loss by fire or otherwise, as
7 aforesaid, of the real property insured, the liability shall
8 be for the total amount of such partial loss, not to exceed
9 the whole amount of insurance upon such real property
10 as stated in the policy. This section shall not apply where
11 such insurance has been procured from two or more
12 insurers covering the same interest in such real property.

Sec. 10. *Auditing and Stamping Office.*—Every insurer
2 licensed in West Virginia and effecting insurance against

3 the risk of loss or damage by fire shall maintain or be a
4 member or subscriber of an auditing and stamping office.
5 Any insurance rating organization licensed under the pro-
6 visions of article twenty of this chapter may establish and
7 maintain such office and any advisory organization of the
8 type described in section ten of article twenty of this chap-
9 ter may establish and maintain such office, subject to the
10 provisions of this section. Each such office serving more
11 than one insurer shall admit to membership or as a sub-
12 scriber any licensed fire insurer applying therefor, and
13 where such office is maintained by a rating organization
14 or advisory organization any such insurer, whether or not
15 a member or subscriber for other services of such rating
16 organization or advisory organization, may subscribe to
17 any of the services of such office for auditing and stamp-
18 ing separately, without being a member or subscriber of
19 such rating organization or advisory organization for
20 rate filings of the business to be audited and stamped.
21 Every such insurer shall submit to such office daily re-
22 ports of all policies written, and copies of binders, renewal
23 certificates, endorsements or other evidence of insurance,
24 containing any coverage against loss or damage by fire,
25 or allied lines, including any type or kind of insurance
26 written as a part of, or as an endorsement to, or in con-
27 nection with, a fire insurance policy, and reports of the
28 cancellation or termination thereof. Each such office shall
29 examine all such documents so submitted and shall report
30 all errors and omissions to the insurer and the representa-
31 tive or agent of the insurer to whom the error or omission
32 is charged. In the event any such insurer shall fail to
33 furnish to such auditing and stamping office within sixty
34 days of receipt of a report of errors or omissions, satis-
35 factory evidence that all errors or omissions so reported
36 have been corrected, it shall be the duty of such office
37 promptly to report such failure to the commissioner.
38 Each such office shall promulgate rules governing the
39 writing and examining of such coverages and shall distri-
40 bute same to its members and subscribers. The expenses
41 of such office shall be borne by its members and sub-
42 scribers under reasonable rules and regulations of such

43 office. Every such insurer shall, in its annual application
44 for license, specify the auditing and stamping office of
45 which it is, or will upon receiving such license become, a
46 member. Each such office shall be subject to examination
47 by the commissioner at such times as he deems necessary
48 and if the commissioner finds that the operation of such
49 office involves any act or practice which is unfair, unrea-
50 sonable or discriminatory, he may issue a written order
51 specifying in what respects such operations are unfair,
52 unreasonable or discriminatory and such office shall com-
53 ply with all orders so issued. This section shall not apply
54 to marine insurance or automobile or aircraft physical
55 damage insurance.

Article 18. Casualty Insurance

Section

1. Article reserved.

Section 1. *Article Reserved.*—The number and location
2 of this article in this chapter is reserved to accommodate
3 future legislation governing casualty insurance.

Article 19. Surety Insurance

Section

1. Article reserved.

Section 1. *Article Reserved.*—The number and location
2 of this article in this chapter is reserved to accommodate
3 future legislation governing surety insurance.

Article 20. Rates and Rating Organizations

Section

1. Purpose and interpretation of article.
2. Scope of article.
3. Making of rates.
4. Rate filings.
5. Disapproval of filings.
6. Rating organizations.
7. Deviations.
8. Appeal by minority.
9. Information to be furnished insureds; hearings and appeals of insureds.
10. Advisory organizations.
11. Joint underwriting or joint reinsurance.
12. Examinations.
13. Rate administration.
14. False or misleading information.
15. Assigned risks.
16. Penalties.

Section 1. *Purpose and Interpretation of Article.*—The
2 purpose of this article is to promote the public welfare by
3 regulating insurance rates to the end that they shall not be
4 excessive, inadequate or unfairly discriminatory, and to
5 authorize and regulate cooperative action among insurers
6 in rate making and in other matters within the scope of
7 this article. Nothing in this article is intended (1) to pro-
8 hibit or discourage reasonable competition, or (2) to pro-
9 hibit, or encourage, except to the extent necessary to
10 accomplish the aforementioned purpose, uniformity in
11 insurance rates, rating systems, rating plans or practices.
12 This article shall be liberally interpreted to carry into
13 effect the provisions of this section.

Sec. 2. *Scope of Article.*—(a) This article applies to
2 fire, marine, casualty, and surety insurance, on risks or
3 operations in this state.

4 (b) This article shall not apply:

5 (1) To reinsurance, other than joint reinsurance to the
6 extent stated in section eleven of this article;

7 (2) To life or accident and sickness insurance;

8 (3) To insurance of vessels or craft, their cargoes, ma-
9 rine builders' risks, marine protection and indemnity, or
10 other risks commonly insured under marine, as distin-
11 guished from inland marine, insurance policies;

12 (4) To insurance against loss of or damage to aircraft,
13 including their accessories and equipment, or against lia-
14 bility, other than workmen's compensation and employers'
15 liability, arising out of the ownership, maintenance or
16 use of aircraft;

17 (5) To title insurance.

18 (c) If any kind of insurance, subdivision or combina-
19 tion thereof, or type of coverage, is subject to both the
20 provisions of this article expressly applicable to casualty
21 and surety insurance and to those expressly applicable
22 to fire and marine insurance, the commissioner may apply
23 to filings made for such kind of insurance the provisions
24 of this article which are in his judgment most suitable.

Sec. 3. *Making of Rates.*—All rates shall be made in
2 accordance with the following provisions:

3 (a) Due consideration shall be given to past and pros-
4 pective loss experience within and outside this state, to
5 catastrophe hazards, if any, to a reasonable margin for
6 underwriting profit and contingencies, to dividends, sav-
7 ings or unabsorbed premium deposits allowed or returned
8 by insurers to their policyholders, members or subscrib-
9 ers, to past and prospective expenses both countrywide
10 and those specially applicable to this state, and to all
11 other relevant factors within and outside this state.

12 (b) Rates shall not be excessive, inadequate or unfairly
13 discriminatory.

14 (c) Rates for casualty and surety insurance to which
15 this article applies shall also be subject to the following
16 provisions:

17 (1) The systems of expense provisions included in the
18 rates for use by any insurer or group of insurers may
19 differ from those of other insurers or groups of insurers
20 to reflect the requirements of the operating methods of
21 any such insurer or group with respect to any kind of
22 insurance, or with respect to any subdivision or combi-
23 nation thereof for which subdivision or combination sepa-
24 rate expense provisions are applicable.

25 (2) Risks may be grouped by classifications for the
26 establishment of rates and minimum premiums. Classifi-
27 cation rates may be modified to produce rates for indi-
28 vidual risks in accordance with rating plans which estab-
29 lish standards for measuring variations in hazards or ex-
30 pense provisions, or both. Such standards may measure
31 any differences among risks that can be demonstrated to
32 have a probable effect upon losses or expenses.

33 (3) Due consideration shall be given to such factors
34 as expense, management, individual experience, under-
35 writing judgment, degree or nature of hazard or any
36 other reasonable considerations, provided such factors
37 apply to all risks under the same or substantially the
38 same circumstances or conditions.

39 (d) Rates for fire and marine insurance to which this
40 article applies shall also be subject to the following pro-
41 visions:

42 (1) Manual, minimum, class rates, rating schedules or

43 rating plans, shall be made and adopted, except in the
44 case of specific inland marine rates on risks specially
45 rated.

46 (2) Due consideration shall be given to the conflagra-
47 tion hazard, and in the case of fire insurance rates con-
48 sideration shall be given to the experience of the fire
49 insurance business during a period of not less than the
50 most recent five year period for which such experience is
51 available.

52 (e) Except to the extent necessary to meet the pro-
53 visions of paragraph (b) of this section, uniformity among
54 insurers in any matters within the scope of this section
55 is neither required nor prohibited.

56 (f) Rates made in accordance with this section may be
57 used subject to the provisions of this article.

Sec. 4. *Rate Filings.*—(a) (1) Every insurer shall file
2 with the commissioner every manual of classifications,
3 rules and rates, every rating plan and every modification
4 of any of the foregoing which it proposes to use for
5 casualty insurance to which this article applies.

6 (2) Every insurer shall file with the commissioner,
7 except as to inland marine risks which by general custom
8 of the business are not written according to manual rates
9 or rating plans, every manual, minimum, class rate, rat-
10 ing schedule or rating plan and every other rating rule
11 and every modification of any of the foregoing which it
12 proposes to use for fire and marine insurance to which
13 this article applies. Specific inland marine rates on risks
14 specially rated, made by a rating organization, shall be
15 filed with the commissioner.

16 (b) Every such filing shall state the proposed effective
17 date thereof and shall indicate the character and extent
18 of the coverage contemplated. When a filing is not ac-
19 companied by the information upon which the insurer
20 supports such filing, and the commissioner does not have
21 sufficient information to determine whether such filing
22 meets the requirements of this article, he shall require
23 such insurer to furnish the information upon which it sup-
24 ports such filing and in such event the waiting period shall
25 commence as of the date such information is furnished.

26 The information furnished in support of a filing may in-
27 clude (1) the experience or judgment of the insurer or
28 rating organization making the filing, (2) its interpreta-
29 tion of any statistical data it relies upon, (3) the experi-
30 ence of other insurers or rating organizations, or (4) any
31 other relevant factors. A filing and any supporting in-
32 formation shall be open to public inspection after the
33 filing becomes effective.

34 (c) An insurer may satisfy its obligation to make such
35 filings by becoming a member of, or a subscriber to, a
36 licensed rating organization which makes such filings,
37 and by authorizing the commissioner to accept such filings
38 on its behalf: *Provided*, That nothing contained in this
39 article shall be construed as requiring any insurer to be-
40 come a member of or a subscriber to any rating organi-
41 zation.

42 (d) The commissioner shall review filings as soon as
43 reasonably possible after they have been made in order
44 to determine whether they meet the requirements of
45 this article.

46 (e) Subject to the exceptions specified in paragraphs
47 (f) and (g) of this section, each filing shall be on file
48 for a waiting period of thirty days before it becomes
49 effective, which period may be extended by the commis-
50 sioner for an additional period not to exceed fifteen days
51 if he gives written notice within such waiting period to
52 the insurer or rating organization which made the filing
53 that he needs such additional time for the consideration
54 of such filing. Upon written application by such insurer
55 or rating organization, the commissioner may authorize
56 a filing which he has reviewed to become effective before
57 the expiration of the waiting period or any extension
58 thereof. A filing shall be deemed to meet the require-
59 ments of this article unless disapproved by the commis-
60 sioner within the waiting period or any extension thereof.

61 (f) Any special filing with respect to a surety bond
62 required by law or by court or executive order or by
63 order, rule or regulation of a public body, not covered
64 by a previous filing, shall become effective when filed
65 and shall be deemed to meet the requirements of this

66 article until such time as the commissioner reviews the
67 filing and so long thereafter as the filing remains in
68 effect.

69 (g) Specific inland marine rates on risks specially rated
70 by a rating organization shall become effective when filed
71 and shall be deemed to meet the requirements of this
72 article until such time as the commissioner reviews the
73 filing and so long thereafter as the filing remains in
74 effect.

75 (h) Under such rules and regulations as he shall adopt
76 the commissioner may, by written order, suspend or
77 modify the requirement of filing as to any kind of in-
78 surance, subdivision or combination thereof, or as to
79 classes of risks, the rates for which cannot practicably be
80 filed before they are used. Such orders, rules and regu-
81 lations shall be made known to insurers and rating or-
82 ganizations affected thereby. The commissioner may make
83 such examination as he may deem advisable to ascertain
84 whether any rates affected by such order meet the stand-
85 ards set forth in paragraph (b) of section three of this
86 article.

87 (i) Upon the written application of the insured, stating
88 his reasons therefor, filed with and approved by the com-
89 missioner, a rate in excess of that provided by a filing
90 otherwise applicable may be used on any specific risk.

91 (j) No insurer shall make or issue a contract or policy
92 except in accordance with the filings which are in effect
93 for said insurer as provided in this article or in accord-
94 ance with paragraphs (h) or (i) of this section. This
95 paragraph shall not apply to contracts or policies for in-
96 land marine risks as to which filings are not required.

Sec. 5. *Disapproval of Filings.*—(a) If within the wait-
2 ing period or any extension thereof as provided in para-
3 graph (e) of section four of this article, the commissioner
4 finds that a filing does not meet the requirements of this
5 article, he shall send to the insurer or rating organization
6 which made such filing, written notice of disapproval of
7 such filing specifying therein in what respects he finds
8 such filing fails to meet the requirements of this article
9 and stating that such filing shall not become effective.

10 (b) If within thirty days after a special surety filing
11 subject to paragraph (f) of section four of this article
12 or if within thirty days after a specific inland marine
13 rate on a risk specially rated by a rating organization
14 subject to paragraph (g) of section four of this article
15 has become effective, the commissioner finds that such
16 filing does not meet the requirements of this article, he
17 shall send to the rating organization which made such
18 filing written notice of disapproval of such filing specify-
19 ing therein in what respects he finds that such filing fails
20 to meet the requirements of this article and stating when,
21 within a reasonable period thereafter, such filing shall be
22 deemed no longer effective. Said disapproval shall not
23 affect any contract made or issued prior to the expiration
24 of the period set forth in said notice.

25 (c) If at any time subsequent to the applicable review
26 period provided for in paragraphs (a) or (b) of this
27 section, the commissioner finds that a filing does not
28 meet the requirements of this article, he shall, after notice
29 and hearing to every insurer and rating organization
30 which made such filing, issue an order specifying in what
31 respects he finds that such filing fails to meet the require-
32 ments of this article, and stating when, within a reason-
33 able period thereafter, such filing shall be deemed no
34 longer effective. Copies of said order shall be sent to
35 every such insurer and rating organization. Said order
36 shall not affect any contract or policy made or issued
37 prior to the expiration of the period set forth in said
38 order.

39 (d) Any person or organization aggrieved with respect
40 to any filing which is in effect may demand a hearing
41 thereon. If, after such hearing, the commissioner finds
42 that the filing does not meet the requirements of this
43 article, he shall issue an order specifying in what re-
44 spects he finds that such filing fails to meet the require-
45 ments of this article, and stating when, within a reason-
46 able period thereafter, such filing shall be deemed no
47 longer effective. Said order shall not affect any contract
48 or policy made or issued prior to the expiration of the
49 period set forth in said order.

50 (e) Any insurer or rating organization, in respect to
51 any filing made by it which is not approved by the com-
52 missioner, may demand a hearing thereon.

53 (f) No manual of classifications, rules, rating plans, or
54 any modification of any of the foregoing which estab-
55 lishes standards for measuring variations in hazards or
56 expense provisions, or both, in the case of casualty insur-
57 ance to which this article applies and no manual, mini-
58 mum, class rate, rating schedule, rating plan, rating rule,
59 or any modification of any of the foregoing, in the case
60 of fire insurance to which this article applies, and which
61 has been filed pursuant to the requirements of section
62 four of this article, shall be disapproved if the rates there-
63 by produced meet the requirements of this article.

Sec. 6. *Rating Organizations.*—(a) A corporation, an
2 unincorporated association, a partnership or an individual,
3 whether located within or outside this state, may make
4 application to the commissioner for license as a rating
5 organization for such kinds of casualty insurance or sub-
6 divisions thereof, or for such kinds of fire and marine in-
7 surance or subdivision or class of risk or a part or combi-
8 nation thereof as are specified in its application and shall
9 file therewith (1) a copy of its constitution, its articles
10 of agreement or association or its certificate of incorpora-
11 tion, and of its by-laws, rules and regulations governing
12 the conduct of its business, (2) a list of its members and
13 subscribers, (3) the name and address of a resident of
14 this state as attorney-in-fact upon whom notices or
15 orders of the commissioner or process affecting such rat-
16 ing organization may be served and (4) a statement of
17 its qualifications as a rating organization. If the com-
18 missioner finds that the applicant is competent, trust-
19 worthy and otherwise qualified to act as a rating organi-
20 zation and that its constitution, articles of agreement or
21 association or certificate of incorporation, and its by-laws,
22 rules and regulations governing the conduct of its busi-
23 ness conform to the requirements of law, he shall issue a
24 license specifying the kinds of insurance or subdivisions
25 thereof for which the applicant is authorized to act as a
26 rating organization. Every such application shall be

27 granted or denied in whole or in part by the commissioner
28 within sixty days of the date of its filing with him.
29 Licenses issued pursuant to this section shall remain in
30 effect for three years unless sooner suspended or revoked
31 by the commissioner. The fee for said license shall be
32 twenty-five dollars, and said fee shall be in lieu of all
33 other fees, licenses or taxes to which a rating organiza-
34 tion might otherwise be subject, all fees so collected to
35 go into the fund provided and for the purposes specified
36 in section thirteen of article three of this chapter. Licenses
37 issued pursuant to this section may be suspended or re-
38 voked by the commissioner, after notice and hearing, in
39 the event the rating organization ceases to meet the re-
40 quirements of this article. Every rating organization shall
41 notify the commissioner promptly of every change in
42 (1) its constitution, its articles of agreement or associa-
43 tion or its certificate of incorporation, and its by-laws,
44 rules and regulations governing the conduct of its busi-
45 ness, (2) its list of members and subscribers and (3) the
46 name and address of the resident of this state designated
47 as attorney-in-fact by it upon whom notices or orders
48 of the commissioner or process affecting such rating or-
49 ganization may be served.

50 (b) Subject to rules and regulations which have been
51 approved by the commissioner as reasonable, each rating
52 organization shall permit any insurer, not a member, to
53 be a subscriber to its rating services for any kind of
54 casualty insurance or subdivision thereof, or for any kind
55 of fire and marine insurance or subdivision or class of
56 risk or a part or combination thereof, or any kind of
57 surety insurance or subdivision thereof, for which it is
58 authorized to act as a rating organization. Notice of pro-
59 posed changes in such rules and regulations shall be given
60 to subscribers. Each rating organization shall furnish its
61 rating services without discrimination to its members and
62 subscribers. The reasonableness of any rule or regulation
63 in its application to subscribers, or the refusal of any
64 rating organization to admit an insurer as a subscriber,
65 shall, at the request of any subscriber or any such in-
66 surer, be reviewed by the commissioner. If, after notice
67 and hearing, the commissioner finds that such rule or

68 regulation is unreasonable in its application to subscribers,
69 he shall order that such rule or regulation shall not be
70 applicable to subscribers. If the rating organization fails
71 to grant or reject an insurer's application for subscriber-
72 ship within thirty days after it was made, the insurer
73 may request a review by the commissioner as if the ap-
74 plication had been rejected. If, after notice and hearing,
75 the commissioner finds that the insurer has been refused
76 admittance to the rating organization as a subscriber
77 without justification, he shall order the rating organiza-
78 tion to admit the insurer as a subscriber. If he finds that
79 the action of the rating organization was justified, he
80 shall make an order affirming its action.

81 (c) No rating organization shall adopt any rule the
82 effect of which would be to prohibit or regulate the pay-
83 ment of dividends, savings or unabsorbed premium de-
84 posits allowed or returned by insurers to their policy-
85 holders, members or subscribers.

86 (d) Cooperation among rating organizations or among
87 rating organizations and insurers in rate making or in
88 other matters within the scope of this article is hereby
89 authorized, provided the filings resulting from such co-
90 operation are subject to all the provisions of this article
91 which are applicable to filings generally. The commis-
92 sioner may review such cooperative activities and prac-
93 tices, and if after a hearing he finds that any such ac-
94 tivity or practice is unfair or unreasonable or otherwise
95 inconsistent with the provisions of this article, he may
96 issue a written order specifying in what respects such ac-
97 tivity or practice is unfair or unreasonable or otherwise
98 inconsistent with the provisions of this article, and re-
99 quiring the discontinuance of such activity or practice.

100 (e) Any rating organization for casualty, marine or
101 surety insurance may provide for the examination of
102 policies, daily reports, binders, renewal certificates, en-
103 dorsements or other evidences of insurance, or the can-
104 cellation thereof, and may make reasonable rules govern-
105 ing their submission. Such rules shall contain a pro-
106 vision that in the event any insurer does not within sixty
107 days furnish satisfactory evidence to the rating organiza-

108 tion of the correction of any error or omission previously
109 called to its attention by the rating organization, it shall
110 be the duty of the rating organization to notify the com-
111 missioner thereof. All information so submitted for ex-
112 amination shall be confidential. Such services for fire
113 insurance shall be governed by the provisions of section
114 ten of article seventeen of this chapter.

115 (f) Any rating organization may subscribe for or pur-
116 chase actuarial, technical or other services, and such serv-
117 ices shall be available to all members and subscribers
118 without discrimination.

Sec. 7. *Deviations.*—(a) Every member of or subscriber
2 to a rating organization shall adhere to the filings made
3 on its behalf by such organization except that:

4 (1) In the case of casualty and surety insurance to
5 which this article applies any such insurer may make
6 written application to the commissioner for permission
7 to file a uniform percentage decrease or increase to be
8 applied to the premiums produced by the rating system
9 so filed for a kind of insurance, or for a class of insurance
10 which is found by the commissioner to be a proper rating
11 unit for the application of such uniform percentage de-
12 crease or increase, or for a subdivision of a kind of insur-
13 ance (a) comprised of a group of manual classifications
14 which is treated as a separate unit for rate making pur-
15 poses, or (b) for which separate expense provisions are
16 included in the filings of the rating organization. Such
17 application shall specify the basis for the modification
18 and shall be accompanied by the data upon which the
19 applicant relies. A copy of the application and data shall
20 be sent simultaneously to such rating organization; and

21 (2) In the case of fire and marine insurance to which
22 this article applies any such insurer may make written
23 application to the commissioner for permission to file a
24 deviation from the class rates, schedules, rating plans
25 or rules respecting any kind of insurance, or class of risk
26 within a kind of insurance or combination thereof. Such
27 application shall specify the basis for the modification
28 and a copy thereof shall also be sent simultaneously to
29 such rating organization. In considering the application

30 for permission to file such deviation the commissioner
31 shall give consideration to the available statistics and the
32 applicable principles for rate making as provided in sec-
33 tion three of this article.

34 (b) The commissioner shall, after notice to such in-
35 surer and rating organization, and hearing, unless hear-
36 ing is waived by such insurer and rating organization,
37 issue an order permitting the modification for such in-
38 surer to be filed if he finds it to be justified and it shall
39 thereupon become effective or issue an order denying
40 such application if he finds that the modification is not
41 justified or that the resulting premiums would be exces-
42 sive, inadequate or unfairly discriminatory. Each devia-
43 tion permitted to be filed shall be effective for a period
44 of one year from the date of such permission unless ter-
45 minated sooner with the approval of the commissioner.

Sec. 8. *Appeal by Minority.*—(a) Any member of or
2 subscriber to a rating organization may appeal to the
3 commissioner from the action or decision of such rating
4 organization in approving or rejecting any proposed
5 change in or addition to the filings of such rating organi-
6 zation and the commissioner shall, after notice and hear-
7 ing, issue an order approving the action or decision of
8 such rating organization or directing it to give further
9 consideration to such proposal, or, if such appeal is from
10 the action or decision of the rating organization in re-
11 jecting a proposed addition to its filings, he may, in the
12 event he finds that such action or decision was unreason-
13 able, issue an order directing the rating organization to
14 make an addition to its filings, on behalf of its members
15 and subscribers, in a manner consistent with his findings,
16 within a reasonable time after the issuance of such order.

17 (b) In the case of casualty and surety insurance to
18 which this article applies, if such appeal is based upon
19 the failure of the rating organization to make a filing on
20 behalf of such member or subscriber which is based on a
21 system of expense provisions which differs, in accordance
22 with the right granted in subdivision (1) of paragraph
23 (c) of section three of this article, from the system of
24 expense provisions included in a filing made by the rating

25 organization, the commissioner shall, if he grants the
26 appeal, order the rating organization to make the re-
27 quested filing for use by the appellant. In deciding such
28 appeal the commissioner shall apply the standards set
29 forth in section three of this article.

Sec. 9. *Information to be Furnished Insureds; Hearings and Appeals of Insureds.*—(a) Every rating organization
2 and every insurer which makes its own rates shall, within
3 a reasonable time after receiving written request therefor
4 and upon payment of such reasonable charge as it may
5 make, furnish to any insured affected by a rate made by
6 it, or to the authorized representative of such insured,
7 all pertinent information as to such rate.
8

9 (b) Every rating organization and every insurer which
10 makes its own rates shall provide within this state rea-
11 sonable means whereby any person aggrieved by the ap-
12 plication of its rating system may be heard, in person or
13 by his authorized representative, on his written request
14 to review the manner in which such rating system has
15 been applied in connection with the insurance afforded
16 him. If the rating organization or insurer fails to grant
17 or reject such request within thirty days after it is made,
18 the applicant may proceed in the same manner as if his
19 application had been rejected. Any party affected by the
20 action of such rating organization or such insurer on such
21 request may, within thirty days after written notice of
22 such action, appeal to the commissioner, who, after notice
23 and hearing, may affirm or reverse such action.

Sec. 10. *Advisory Organizations.*—(a) Every group,
2 association or other organization of insurers, whether
3 located within or outside this state, which assists insurers
4 which make their own filings or rating organizations in
5 rate making, by the collection and furnishing of loss or
6 expense statistics, or by the submission of recommenda-
7 tions, but which does not make filings under this article,
8 shall be known as an advisory organization.

9 (b) Every advisory organization shall file with the com-
10 missioner (1) a copy of its constitution, its articles of
11 agreement or association or its certificate of incorpora-
12 tion and of its by-laws, rules and regulations governing

13 its activities, (2) a list of its members, (3) the name and
14 address of a resident of this state as its attorney-in-fact
15 upon whom notices or orders of the commissioner or
16 process may be served, and (4) an agreement that the
17 commissioner may examine such advisory organization
18 in accordance with the provisions of section twelve of
19 this article.

20 (c) If after notice and hearing the commissioner finds
21 that the furnishing of such information or assistance in-
22 volves any act or practice which is unfair or unreasonable
23 or otherwise inconsistent with the provisions of this ar-
24 ticle, he may issue a written order specifying in what
25 respects such act or practice is unfair or unreasonable
26 or otherwise inconsistent with the provisions of this ar-
27 ticle, and requiring the discontinuance of such act or prac-
28 tice.

29 (d) No insurer which makes its own filings nor any
30 rating organization shall support its filings by statistics
31 or adopt rate making recommendations, furnished to it
32 by an advisory organization which has not complied with
33 this section or with an order of the commissioner involv-
34 ing such statistics or recommendations issued under par-
35 agraph (c) of this section. If the commissioner finds such
36 insurer or rating organization to be in violation of this
37 paragraph he may issue an order requiring the discon-
38 tinuance of such violation.

Sec. 11. *Joint Underwriting or Joint Reinsurance.*—

2 (a) Every group, association or other organization of in-
3 surers which engages in joint underwriting or joint re-
4 insurance, shall be subject to regulation with respect
5 thereto as herein provided, subject, however, with respect
6 to joint underwriting, to all other provisions of this ar-
7 ticle and, with respect to joint reinsurance, to section
8 twelve of this article.

9 (b) If after notice and hearing the commissioner finds
10 that any activity or practice of any such group, associa-
11 tion or other organization is unfair or unreasonable or
12 otherwise inconsistent with the provisions of this article,
13 he may issue a written order specifying in what respects
14 such activity or practice is unfair or unreasonable or

15 otherwise inconsistent with the provisions of this article,
16 and requiring the discontinuance of such activity or prac-
17 tice.

Sec. 12. *Examinations.*—(a) The commissioner shall, at
2 least once in five years, make or cause to be made an
3 examination of each rating organization licensed under
4 the provisions of section six of this article and he may,
5 as often as he may deem it expedient, make or cause to
6 be made an examination of each advisory organization
7 referred to in section ten of this article and of each group,
8 association or other organization referred to in section
9 eleven of this article. The reasonable costs of any such
10 examination shall be paid by the rating organization,
11 advisory organization, or group, association or other or-
12 ganization examined upon presentation to it of a detailed
13 account of such costs. The officers, managers, agents and
14 employees of such rating organization, advisory organi-
15 zation, or group, association or other organization may
16 be examined at any time under oath and shall exhibit
17 all books, records, accounts, documents, or agreements
18 governing its method of operation. The commissioner
19 shall furnish two copies of the examination report to the
20 organization, group or association examined not less than
21 ten days prior to filing same in his office. If such organi-
22 zation, group or association so requests in writing, within
23 such ten-day period, the commissioner shall consider the
24 objections, if any, to such report as proposed, and shall not
25 file such report until such modifications, if any, have been
26 made therein as the commissioner deems proper. The
27 report when so filed shall be admissible in any action or
28 proceeding brought by the commissioner against the or-
29 ganization, group or association examined, or its officers
30 or agents, and shall be prima facie evidence of the facts
31 stated therein. The commissioner may withhold the re-
32 port of any such examination for such time as he may
33 deem proper.

34 (b) In lieu of any such examination the commissioner
35 may accept the report of an examination made by the
36 insurance supervisory official of another state, pursuant
37 to the laws of such state.

2 Sec. 13. *Rate Administration.*—(a) Recording the Re-
3 reporting of Loss and Expense Experience. The commis-
4 sioner shall promulgate reasonable rules and statistical
5 plans, reasonably adapted to each of the rating systems on
6 file with him, which may be modified from time to time
7 and which shall be used thereafter by each insurer in the
8 recording and reporting of its loss and countrywide ex-
9 pense experience, in order that the experience of all insur-
10 ers may be made available at least annually in such form
11 and detail as may be necessary to aid him in determining
12 whether rating systems comply with the standards set
13 forth in section three of this article. Such rules and plans
14 may also provide for the recording and reporting of loss
15 and expense experience items which are specially appli-
16 cable to this state and are not susceptible of determination
17 by a prorating of countrywide experience. In promulgat-
18 ing such rules and plans, the commissioner shall give due
19 consideration to the rating systems on file with him, and
20 in order that such rules and plans may be as uniform
21 as is practicable among the several states, to the rules
22 and to the form of the plans used for such rating systems
23 in other states. No insurer shall be required to record or
24 report its loss experience on a classification basis that is
25 inconsistent with the rating system filed by it. The com-
26 missioner may designate one or more rating organizations
27 or other agencies to assist him in gathering such exper-
28 ience and making compilations thereof, and such com-
29 pilations shall be made available, subject to reasonable
30 rules promulgated by the commissioner, to insurers and
31 rating organizations.

32 (b) Interchange of Rating Plan Data. Reasonable rules
33 and plans may be promulgated by the commissioner for
34 the interchange of data necessary for the application of
35 rating plans.

36 (c) Consultation with Other States. In order to further
37 uniform administration of rate regulatory laws, the com-
38 missioner and every insurer and rating organization may
39 exchange information and experience data with insur-
40 ance supervisory officials, insurers and rating organiza-
tions in other states and may consult with them with

41 respect to rate making and the application of rating
42 systems.

Sec. 14. *False or Misleading Information.*—No person
2 or organization shall wilfully withhold information from,
3 or knowingly give false or misleading information to, the
4 commissioner, any statistical agency designated by the
5 commissioner, any rating organization, or any insurer,
6 which will affect the rates or premiums chargeable under
7 this article.

Sec. 15. *Assigned Risks.*—With respect to casualty in-
2 surance to which this article applies, agreements may be
3 made among insurers with respect to the equitable ap-
4 portionment among them of insurance which may be
5 afforded applicants who are in good faith entitled to but
6 who are unable to procure such insurance through ordi-
7 nary methods and such insurers may agree among them-
8 selves on the use of reasonable rate modifications for such
9 insurance, such agreements and rate modifications to be
10 subject to the approval of the commissioner.

Sec. 16. *Penalties.*—(a) The commissioner may suspend,
2 revoke or refuse to renew the license of any rating or-
3 ganization which violates any provision of this article or
4 chapter or which fails to comply with an order of the
5 commissioner issued pursuant to this chapter, within the
6 time limited by such order, or any extension thereof
7 which the commissioner may grant. The commissioner
8 may determine when a suspension of license shall become
9 effective and it shall remain in effect for the period fixed
10 by him, unless he modifies or rescinds such suspension, or
11 until the order upon which such suspension is based is
12 modified, rescinded or reversed.

13 (b) No license shall be suspended or revoked except
14 upon a written order of the commissioner made after
15 notice and hearing. The commissioner shall not suspend
16 or revoke the license of any rating organization for failure
17 to comply with an order of the commissioner until the
18 time prescribed for an appeal therefrom has expired or,
19 if an appeal has been taken, until such order has been
20 affirmed.

Article 21. Reciprocal Insurers

Section

1. Scope of article.
2. General laws applicable.
3. Kinds of insurance.
4. Name.
5. Attorney.
6. Application for license.
7. Issuance of license; suspension, etc.
8. Power of attorney.
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10. Attorney's bond.
11. Annual report.
12. Process and venue.
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14. Who may be subscribers.
15. Subscriber's advisory committee.
16. Subscriber's liability.
17. Subscriber's liability on judgments.
18. Assessments.
19. Time limit for assessment.
20. Aggregate liability.
21. Nonassessable policies.
22. Distribution of savings.
23. Contributions.
24. Financial condition.
25. Subscriber's share in assets.
26. Merger or conversion.

Section 1. *Scope of Article.*—This article applies to reciprocal insurers and reciprocal insurance. Foreign and alien reciprocal insurers shall be governed by all provisions of this article not expressly made applicable only to domestic reciprocal insurers, and domestic reciprocal insurers shall be governed by all the provisions of this article.

Sec. 2. *General Laws Applicable.*—Except as otherwise provided, and except where the context clearly requires otherwise, all the provisions of this chapter relating to insurers generally, and all the provisions of this chapter relating to insurers transacting the same kinds of insurance which reciprocal insurers are permitted to transact, are applicable to reciprocal insurers, except that article twelve of this chapter shall not apply to reciprocal insurers.

Sec. 3. *Kinds of Insurance.*—A reciprocal insurer, upon being licensed therefor as provided in this article, when possessed of and maintaining on deposit surplus funds equal to the minimum capital required of a stock in-

5 surer to transact like kinds of insurance, may transact
6 fire, marine, casualty or surety insurance, and may pur-
7 chase reinsurance upon the risk of any subscriber, and
8 may grant reinsurance as to any kind of insurance it
9 is licensed to transact direct. No reciprocal insurer shall
10 be licensed to transact, nor shall any reciprocal insurer
11 transact, life or accident and sickness insurance.

Sec. 4. *Name*.—A reciprocal insurer shall have and use
2 a business name, which shall include the word “recipro-
3 cal”, or “inter-insurer”, or “inter-insurance”, or “ex-
4 change”, or “underwriters”, or “underwriting”, in which
5 name such insurer may sue and be sued.

Sec. 5. *Attorney*.—“Attorney”, as used in this article,
2 refers to the attorney-in-fact of a reciprocal insurer, and
3 such attorney may be an individual, firm or corporation.

Sec. 6. *Application for License*.—A reciprocal insurer
2 desiring to transact insurance may apply to the commis-
3 sioner for a license. The attorney shall execute under his
4 oath and file with the commissioner such application set-
5 ting forth:

6 (a) The name of the insurer;

7 (b) The location of the insurer’s principal office, which
8 shall be the same as that of the attorney, and in the case
9 of a domestic reciprocal insurer shall be maintained with-
10 in this state;

11 (c) The kinds of insurance proposed to be transacted;

12 (d) The designation and appointment of the proposed
13 attorney and a copy of the power of attorney;

14 (e) The names and addresses of the officers and direc-
15 tors of the attorney, if a corporation, or its members, if a
16 firm;

17 (f) In the case of a domestic reciprocal insurer, the
18 powers of the subscribers’ advisory committee, and in the
19 case of domestic, foreign or alien reciprocal insurers, the
20 names and terms of office of the members thereof;

21 (g) In the case of a domestic reciprocal insurer that all
22 monies paid to the reciprocal shall, after deducting there-
23 from any sum payable to the attorney, be held in the name

24 of the insurer and for the purposes specified in the sub-
25 scribers' agreement;

26 (h) A copy of the subscribers' agreement;

27 (i) A statement of the financial condition of the insurer,
28 a schedule of its assets, and a statement that the surplus
29 as required by section three of this article is on hand;

30 (j) A copy of each policy, endorsement, and application
31 form it then proposes to issue or use;

32 (k) In the case of a foreign or alien reciprocal insurer a
33 statement from the insurance supervisory official of its
34 state of domicile or entry that it is licensed in such state
35 to transact the kinds of insurance it proposes to transact
36 in West Virginia;

37 (l) In the case of a domestic reciprocal insurer, the
38 names and addresses of the original subscribers who must
39 number at least twenty-five;

40 (m) In the case of a domestic reciprocal insurer, a state-
41 ment that each of the original subscribers has in good
42 faith applied for insurance of a kind proposed to be trans-
43 acted, and that the insurer has received from each such
44 subscriber the full premium or premium deposit required
45 for the policy applied for, for a term of not less than six
46 months at an adequate rate theretofore filed with and
47 approved by the commissioner;

48 (n) Such other information as the commissioner deems
49 necessary.

Sec. 7. *Issuance of License; Suspension, etc.*—The license
2 of a reciprocal insurer shall be issued to its attorney in the
3 name of the insurer and may be suspended, revoked or
4 renewal refused in the same manner and upon the same
5 grounds as other insurers.

Sec. 8. *Power of Attorney.*—(a) The rights and powers
2 of the attorney of a reciprocal insurer shall be as provided
3 in the power of attorney given it by the subscribers, which
4 power of attorney must set forth:

5 (1) The powers of the attorney;

6 (2) That the attorney is empowered to accept service
7 of process on behalf of the insurer;

8 (3) The general services to be performed by the at-
9 torney;

10 (4) The maximum amount to be deducted from advance
11 premiums or deposits to be paid to the attorney and the
12 general items of expense in addition to losses, to be paid
13 by the insurer;

14 (5) Except as to nonassessable policies, a provision for a
15 contingent several liability of each subscriber in a specified
16 amount, which amount shall be not less than one nor more
17 than ten times the annual premium or premium deposit
18 stated in the policy.

19 (b) The power of attorney may:

20 (1) Provide for the right of substitution of the attorney
21 and revocation of the power of attorney and rights there-
22 under;

23 (2) Impose such restrictions upon the exercise of the
24 power as are agreed upon by the subscribers;

25 (3) Provide for the exercise of any right reserved to
26 the subscribers directly or through their advisory com-
27 mittee;

28 (4) Contain other lawful provisions deemed advisable.

29 (c) The terms of any power of attorney or agreement
30 collateral thereto shall be reasonable and equitable.

Sec. 9. *Modifications.*—Modification of the terms of the
2 subscribers' agreement or of the power of attorney of a
3 domestic reciprocal insurer shall be made jointly by the
4 attorney and the subscribers' advisory committee. No
5 modification of a domestic, foreign or alien reciprocal
6 insurer's power of attorney or subscribers' agreement shall
7 be effective retroactively, nor as to any insurance contract
8 issued prior thereto, and such modification shall be rea-
9 sonable and equitable, and shall be filed with the commis-
10 sioner.

Sec. 10. *Attorney's Bond.*—(a) Concurrently with the
2 filing of the application provided for in section six of this
3 article, the attorney of a domestic reciprocal insurer shall
4 file with the commissioner a bond in favor of the state of
5 West Virginia for the benefit of all persons damaged as a
6 result of breach by the attorney of the conditions of his

7 bond as set forth in paragraph (b) of this section. The
8 bond shall be executed by the attorney and by an author-
9 ized corporate surety, and shall be subject to the commis-
10 sioner's approval.

11 (b) The bond shall be in the penal sum of twenty-five
12 thousand dollars, aggregate in form, conditioned that the
13 attorney will faithfully account for all monies and other
14 property of the insurer coming into his hands, and that he
15 will not withdraw or appropriate to his own use from the
16 funds of the insurer, any monies or property to which he
17 is not entitled under the power of attorney.

18 (c) The bond shall provide that it is not subject to can-
19 cellation unless thirty days' advance notice in writing of
20 cancellation is given both the attorney and the commis-
21 sioner.

22 (d) In lieu of such bond, the attorney may maintain on
23 deposit with the state treasurer through the office of the
24 commissioner a like amount in cash or in value of securi-
25 ties qualified under this chapter as insurers' deposit invest-
26 ments, and subject to the same conditions as the bond.

27 (e) Action on the attorney's bond or to recover against
28 any such deposit made in lieu thereof may be brought at
29 any time by one or more subscribers suffering loss through
30 a violation of its conditions, or by a receiver or liquidator
31 of the insurer. Amounts recovered on the bond shall be
32 deposited in and become part of the insurer's funds. The
33 total aggregate liability of the surety shall be limited to
34 the amount of the penalty of such bond.

Sec. 11. *Annual Report.*—(a) The annual report of a
2 reciprocal insurer shall be made and filed by its attorney.

3 (b) The report shall be supplemented by such informa-
4 tion as may be required by the commissioner relative to
5 the affairs and transactions of the attorney insofar as they
6 pertain to the reciprocal insurer.

Sec. 12. *Process and Venue.*—(a) Concurrently with
2 the filing of the application provided for by the terms of
3 section six of this article, the attorney shall file with the
4 commissioner an instrument in writing, executed by him
5 for said subscribers, conditioned that upon the issuance of

6 the license provided for in section seven of this article
7 any action, suit or other proceeding arising out of any
8 insurance contract or policy issued under such license,
9 may be brought in the county of this state wherein the
10 property insured was situated either at the date of the
11 policy or at the time when the right of action accrued, or
12 in the county of this state wherein the person insured had
13 a legal residence at the date of his death or at the time
14 the right of action accrued, and that service of any process
15 or notice may be had upon the auditor of this state in all
16 actions, suits or other proceedings in this state arising out
17 of such policies, contracts, agreements or other business
18 of insurance transacted under such license, and that said
19 auditor may accept service of any such process or notice.

20 (b) Such service or acceptance of service shall be valid
21 and binding upon such attorney and upon all subscribers
22 exchanging at any time reciprocal or inter-insurance con-
23 tracts through such attorney. Two copies of such process
24 or notice, in addition to the original, shall be furnished
25 the auditor, and he shall file one copy, forward one copy
26 to said attorney and return the original with his accept-
27 ance of service or for return of service. But no process or
28 notice shall be served on the auditor or accepted by him
29 less than ten days before the return day thereof. Where
30 the principal office of the attorney is located in this state,
31 service of process may be had upon all subscribers by
32 serving same upon the attorney at said office. Service of
33 process shall not be had upon said subscribers or any of
34 them in any suit or other proceeding in this state except
35 in the manner provided in this section, and any action,
36 suit, or other proceeding may be begun and prosecuted
37 against or defended by them under the name or designa-
38 tion adopted by them.

39 (c) The attorney shall pay to the auditor an annual fee
40 of ten dollars.

Sec. 13. *Fees and Taxes.*—(a) The attorney for each
2 reciprocal insurer shall pay on behalf of such insurer all
3 fees and taxes prescribed by this chapter for other insurers
4 transacting like kinds of insurance, except that the amount
5 of the premium tax shall be computed upon the gross

6 premiums on business transacted in this state less pre-
7 miums returnable because of cancellation and less amounts
8 returned to subscribers or credited to their accounts as
9 savings.

10 (b) In addition such attorney shall pay annually on
11 behalf of such reciprocal insurer the fire marshal's tax
12 provided by section twenty-four, article three, chapter
13 twenty-nine of this code, to the extent such tax is appli-
14 cable to the kinds of insurance transacted in this state by
15 such reciprocal insurer.

16 (c) No reciprocal insurer shall be liable for any taxes
17 except those described in this section and property taxes
18 upon real and personal property, unless reciprocal in-
19 surers be specifically mentioned in the law imposing such
20 taxes.

Sec. 14. *Who May be Subscribers.*—Individuals, part-
2 nerships, and corporations of this state may make appli-
3 cation, enter into agreement for and hold policies or con-
4 tracts in or with and be a subscriber of any domestic,
5 foreign, or alien reciprocal insurer. Any public or private
6 corporation now or hereafter created by or organized
7 under the laws of this state shall, in addition to the rights,
8 powers, and franchises specified in its articles of incorpora-
9 tion, have full power and authority as a subscriber to
10 exchange insurance contracts through such reciprocal
11 insurance. The right to exchange such contracts is hereby
12 declared to be incidental to the purposes for which such
13 corporations are organized and to be as fully granted as
14 the rights and powers expressly conferred upon such
15 corporations. Any officer, representative, trustee, receiver,
16 or legal representative of any such subscriber shall be
17 recognized as acting for or on its behalf for the purpose
18 of such contract but shall not be personally liable upon
19 such contract by reason of acting in such representative
20 capacity.

Sec. 15. *Subscriber's Advisory Committee.*—(a) The
2 advisory committee of a domestic reciprocal insurer exer-
3 cising the subscribers' rights shall be selected under such
4 rules as the subscribers adopt.

5 (b) Not less than two-thirds of such committee shall be
6 subscribers other than the attorney, or any person employ-
7 ed by, representing, or having a financial interest in the
8 attorney.

9 (c) The committee shall:

10 (1) Supervise the finances of the insurer;

11 (2) Supervise the insurer's operations to such extent
12 as to assure conformity with the subscribers' agreement
13 and power of attorney;

14 (3) Procure the audit of the accounts and records of
15 the insurer and of the attorney at the expense of the in-
16 surer;

17 (4) Have such additional powers and functions as may
18 be conferred by the subscribers' agreement.

Sec. 16. *Subscriber's Liability.*—(a) The liability of
2 each subscriber, other than as to a nonassessable policy,
3 for the obligations of the reciprocal insurer shall be an
4 individual, several, and proportionate liability, and not
5 joint.

6 (b) Except as to a nonassessable policy each subscriber
7 shall have a contingent assessment liability, in the amount
8 provided for in the power of attorney or in the subscribers'
9 agreement, for payment of actual losses and expenses
10 incurred while his policy was in force. Such contingent
11 liability may be at the rate of not less than one nor more
12 than ten times the premium or premium deposit stated in
13 the policy, and the maximum aggregate thereof shall be
14 computed in the manner set forth in section twenty of
15 this article.

16 (c) Each assessable policy issued by the insurer shall
17 contain a statement of the contingent liability, set in type
18 of the same prominence as the insuring clause.

Sec. 17. *Subscriber's Liability on Judgments.*—(a) No
2 action shall lie against any subscriber upon any obliga-
3 tion claimed against the insurer until a final judgment
4 has been obtained against the insurer and remains unsatis-
5 fied for thirty days.

6 (b) Any such judgment shall be binding upon each
7 subscriber only in such proportion as his interests may

8 appear and in amount not exceeding his contingent liabili-
9 ty, if any.

Sec. 18. *Assessments.*—(a) Assessments may from time
2 to time be levied upon subscribers of a domestic reciprocal
3 insurer liable therefor under the terms of their policies by
4 the attorney upon approval in advance by the subscribers'
5 advisory committee; or by the receiver, conservator, re-
6 habilitator or liquidator, in liquidation proceedings of the
7 insurer.

8 (b) Each such subscriber's share of a deficiency for
9 which an assessment is made, but not exceeding in any
10 event his aggregate contingent liability as computed in
11 accordance with section twenty of this article, shall be
12 computed by applying to the premium earned on the
13 subscriber's policy or policies during the period to be
14 covered by the assessment, the ratio of the total deficiency
15 to the total premiums earned during such period upon all
16 policies subject to the assessment.

17 (c) In computing the earned premiums for the purposes
18 of this section, the gross premium received by the insurer
19 for the policy shall be used as a base, deducting therefrom
20 only charges not recurring upon the renewal or extension
21 of the policy.

22 (d) No such subscriber shall have an offset against any
23 assessment for which he is liable, on account of any claim
24 for unearned premium or losses payable.

Sec. 19. *Time Limit for Assessment.*—Every subscriber
2 of a domestic reciprocal insurer having contingent liability
3 shall be liable for, and shall pay his share of any assess-
4 ment, as computed and limited in accordance with this
5 article, if,

6 (a) While his policy is in force or within one year after
7 its termination, he is notified by either the attorney or
8 the receiver, conservator, rehabilitator or liquidator of his
9 intentions to levy such assessment, or

10 (b) If an order to show cause why a receiver, conserva-
11 tor, rehabilitator, or liquidator of the insurer should not
12 be appointed is issued while his policy is in force or within
13 one year after its termination.

2 Sec. 20. *Aggregate Liability*.—In the case of a domestic
3 reciprocal insurer no one policy or subscriber as to such
4 policy shall be assessed or charged with an aggregate of
5 contingent liability as to obligations incurred by a recip-
6 cal insurer in any one calendar year, in excess of the
7 amount provided for in the power of attorney or in the
8 subscribers' agreement, computed solely upon premium
9 earned on such policy during that year.

2 Sec. 21. *Nonassessable Policies*.—(a) If a reciprocal in-
3 surer has a surplus of assets over all liabilities in an
4 amount equal to the minimum capital stock generally
5 required of a domestic stock insurer authorized to transact
6 like kinds of insurance, upon application of the attorney
7 and as approved by the subscribers' advisory committee,
8 the commissioner may issue his certificate authorizing the
9 insurer to extinguish the contingent liability of subscribers
10 under its policies then in force in this state, and to omit
11 provisions imposing contingent liability in all policies
12 delivered or issued for delivery in this state for so long
13 as such surplus funds remain unimpaired.

14 (b) Upon impairment of such surplus, the commissioner
15 may revoke such certificate. Such revocation shall not
16 render subject to contingent liability any policy then in
17 force and for the remainder of the period for which the
18 premium has theretofore been paid; but after such revo-
19 cation no policy shall be issued or renewed without pro-
20 viding for contingent assessment liability of the subscriber.

21 (c) The commissioner shall not authorize a reciprocal
22 insurer so to extinguish the contingent liability of any
23 of its subscribers or in any of its policies to be issued,
24 unless it qualifies to and does extinguish such liability of
25 all its subscribers and in all such policies for all kinds of
26 insurance transacted by it. Except, that if required by
27 the laws of another state in which the insurer is trans-
28 acting insurance as an authorized insurer, the insurer may
29 issue policies providing for the contingent liability of
30 such of its subscribers as may acquire such policies in such
31 state, and need not extinguish the contingent liability
32 applicable to policies theretofore in force in such state.

32 (d) No reciprocal insurer shall deliver or issue for
33 delivery in this state assessable policies imposing a con-
34 tingent liability upon subscribers, if such reciprocal in-
35 surer is issuing for delivery to subscribers in this or any
36 other state nonassessable policies insuring risks of sub-
37 stantially the same hazard and class.

Sec. 22. *Distribution of Savings.*—A reciprocal insurer
2 may from time to time return to its subscribers any unused
3 premiums, savings, or credits accruing to their accounts.
4 Any such distribution shall not unfairly discriminate
5 between classes of risks, or policies, or between sub-
6 scribers, but such distribution may vary as to classes of
7 subscribers based upon the experience of such subscribers.

Sec. 23. *Contributions.*—The attorney or other parties
2 may advance to a reciprocal insurer upon reasonable
3 terms such funds as it may require from time to time in
4 its operations. Sums so advanced shall not be treated as
5 a liability of the insurer, and, except upon liquidation of
6 the insurer, shall not be withdrawn or repaid except out
7 of the insurer's realized earned surplus in excess of its
8 minimum required surplus.

Sec. 24. *Financial Condition.* — In determining the fi-
2 nancial condition of a reciprocal insurer the commissioner
3 shall apply the following rules:

4 (a) He shall charge as liabilities the same reserves as
5 are required of incorporated insurers issuing nonassessable
6 policies on a reserve basis.

7 (b) The surplus deposits of subscribers shall be allowed
8 as assets, except that any premium deposit delinquent for
9 ninety days shall first be charged against such surplus
10 deposit.

11 (c) The surplus deposits of subscribers shall not be
12 charged as a liability.

13 (d) All premium deposits delinquent less than ninety
14 days shall be allowed as assets.

15 (e) An assessment levied upon subscribers, and not
16 collected, shall not be allowed as an asset.

17 (f) The contingent liability of subscribers shall not be
18 allowed as an asset.

19 (g) The computation of reserves shall be based upon
20 premium deposits other than membership fees and with-
21 out any deduction for the compensation of the attorney.

Sec. 25. *Subscriber's Share in Assets.*—Upon the liquida-
2 tion of a domestic reciprocal insurer, its assets remaining
3 after discharge of its indebtedness and policy obligations,
4 the return of any contributions of the attorney or other
5 persons to its surplus made as provided in section twenty-
6 three of this article, and the return of any unused pre-
7 mium, savings, or credits then standing on subscribers'
8 accounts, shall be distributed to its subscribers who were
9 such within the twelve months prior to the last termina-
10 tion of its license, according to such reasonable formula
11 as the commissioner may approve.

Sec. 26. *Merger or Conversion.*—(a) A domestic recipro-
2 cal insurer upon affirmative vote of not less than two-
3 thirds of its subscribers who vote on such merger pursuant
4 to due notice and the approval of the commissioner of the
5 terms therefor, may merge with another reciprocal insurer
6 or be converted to a stock or mutual insurer.

7 (b) Such a stock or mutual insurer shall be subject to
8 the same capital requirements and shall have the same
9 rights as a like domestic insurer transacting like kinds of
10 insurance.

11 (c) The commissioner shall not approve any plan for
12 such merger or conversion which is inequitable to sub-
13 scribers, or which, if for conversion to a stock insurer,
14 does not give each subscriber preferential right to acquire
15 stock of the proposed insurer proportionate to his interest
16 in the reciprocal insurer as determined in accordance with
17 section twenty-five of this article and a reasonable length
18 of time within which to exercise such right.

Article 22. Farmers' Mutual Fire Insurance Companies

Section

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Section 1. *Scope of Article.*—Every farmers' mutual fire insurance company, hereinafter called "company", organized under the laws of this state shall be governed by the provisions of this article and by no other provisions of this chapter except such provisions as are specifically made applicable and referred to in this article. No law hereafter enacted shall apply to such companies unless such law shall declare that it is specifically applicable to farmers' mutual fire insurance companies.

Sec. 2. *Other Provisions Applicable.*—Each such company to the same extent such provisions are applicable to domestic mutual insurers shall be governed by and be subject to the following articles of this chapter: article one (definitions), article two (insurance commissioner), article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article ten (rehabilitation and liquidation) except that under the provisions of section thirty-two of said article ten no assessment shall be levied against any former member of a farmers' mutual fire insurance company who was no longer a member of such company at the time the order to show cause was issued, article eleven (unfair practices and frauds), and article twelve (agents, brokers and solicitors) except that the agents' license fee shall be one dollar; but only to the extent such provisions are not inconsistent with the provisions of this article.

Sec. 3. *Incorporation.*—Such company may be organized and incorporated without capital stock for the purpose of insuring property against loss or damage as hereinafter authorized, in the same manner as non-stock companies generally are organized and incorporated, except that the

6 secretary of state of this state shall not issue a certificate
7 of incorporation until the commissioner shall have ex-
8 amined the charter and approved same in writing upon
9 being satisfied that the company is in a position to comply
10 with the provisions of this article.

Sec. 4. *License.*—No such company shall transact insur-
2 ance in West Virginia except as authorized by a license
3 issued by the commissioner. Such company shall apply to
4 the commissioner for such license and shall file with such
5 application a certified copy of its charter and by-laws,
6 together with applications from residents of this state for
7 not less than one hundred thousand dollars of insurance
8 of the type such companies are permitted to transact on
9 property located in this state. The term of such license,
10 renewal, refusal to license, revocation, suspension or pen-
11 alty in lieu thereof, and reissuance, shall be governed by
12 the provisions of sections eight, nine, ten, and eleven, of
13 article three of this chapter, in the same manner that such
14 sections are applicable to insurers generally, to the extent
15 such provisions are not inconsistent with the provisions
16 of this article.

Sec. 5. *Corporate Organization and Procedure.*—(a) The
2 number of directors of any such company shall not be less
3 than six nor more than fifteen, a majority of whom shall
4 constitute a quorum to do business, to be elected from the
5 incorporators by ballot, of whom one-third shall be elected
6 for one year, one-third for two years and one-third for
7 three years, until their successors are elected and qualified.
8 At all subsequent elections, except to fill vacancies, one-
9 third of such board of directors shall be elected for three
10 years, such election to be held at the annual meeting of
11 the company. In the election of the first board of directors
12 each incorporator shall be entitled to one vote. At every
13 subsequent election every member shall be entitled to one
14 vote and may cast the same in person or by proxy. Regular
15 meetings of the board of directors shall be held as often
16 as the by-laws may provide, and special meetings may be
17 held at the call of the president, secretary, or a majority
18 of the board of directors.

19 (b) The directors shall elect from their number a presi-
20 dent and a treasurer, and shall also employ a secretary,
21 who may or may not be a member of the company, all of
22 whom shall hold their office for one year and until their
23 successors are elected and qualified. Any two of the above
24 named offices except the office of president may be held
25 by the same person. The directors shall also prescribe the
26 duties of the officers and fix their compensation, not incon-
27 sistent with the charter and by-laws.

28 (c) The treasurer and secretary shall give bonds to the
29 company for the faithful performance of their duties in
30 such amounts as shall be prescribed by the board of di-
31 rectors, only one bond being required where the office of
32 treasurer and secretary is held by the same person. Bonds
33 may be required of other employees and agents of the
34 company at the discretion of the board of directors.

35 (d) The board of directors shall notify all members of
36 the time and place of the annual meeting of such mem-
37 bers, either by printing the same on their policies or by
38 written notice.

39 (e) Each such company when so licensed to transact
40 insurance shall possess all the powers necessary to carry
41 out its corporate purposes and not inconsistent with this
42 article or the laws of this state. Amendments to the
43 charter or by-laws may be offered by the board or any
44 member at any regular or special meeting of the members
45 upon written notice to all members of the intention to
46 propose such amendments not less than thirty days prior
47 to such meeting, and such amendments may be adopted
48 by the approval of a majority of the members present and
49 voting in person or by proxy. No such amendment shall
50 be effective unless and until approved by the commis-
51 sioner.

52 (f) The president or vice-president, and secretary or
53 assistant secretary of every such company shall prepare
54 annually, under oath, a full, true and complete statement
55 of the condition of such company as of the thirty-first day
56 of December, and present the same to the annual meeting.

2 Sec. 6. *Members.*—(a) Each policyholder of such com-
pany is a member thereof and is entitled to all the rights

3 and privileges and is subject to all liabilities connected
4 with such membership.

5 (b) Whenever any public or private corporation, board
6 or association in this state holds a policy in any such
7 company, any officer, stockholder or trustee of any such
8 corporation, board or association may be recognized as
9 acting for or on its behalf for the purpose of such mem-
10 bership, but shall not be personally liable upon such con-
11 tract of insurance by reason of acting in such representa-
12 tive capacity. The right of any corporation organized
13 under the laws of this state to participate as a member of
14 such company is hereby declared to be incidental to the
15 purpose for which such corporation is organized and as
16 much granted as the rights and powers expressly con-
17 ferred.

Sec. 7. *Policy Approval.*—(a) No policy form shall be
2 issued or used by any such company unless such form has
3 been filed with and approved by the commissioner. The
4 filing, approval and disapproval of such forms shall be
5 governed by the provisions of sections eight and nine of
6 article six of this chapter in the same manner as form
7 filings of other insurers.

8 (b) All terms and conditions of such policies shall be
9 set forth in full in the policy or endorsements attached
10 thereto including the contingent liability, if any, of the
11 policyholder, and no provision purporting to make any
12 portion of the charter, by-laws or other documents a part
13 of the policy shall be valid unless such portion is set forth
14 in full in the policy.

15 (c) Policies may limit the liability of the company to a
16 fixed percent of the value of the property insured.

17 (d) Whenever the commissioner believes the public
18 interest requires a standard form for a particular kind of
19 coverage, the commissioner may prescribe a standard form
20 of policy for such companies, or a standard specific pro-
21 vision to be inserted in such policies, and all policies
22 thereafter issued by such companies shall conform to
23 such standard forms or provisions.

Sec. 8. *Insuring Powers.*—(a) Every such company may

2 issue policies of insurance on property located anywhere
3 in this state, signed by its president and secretary, pro-
4 viding insurance against:

5 (1) Loss or damage to dwelling houses, stores and all
6 kinds of buildings and household furniture, goods, mer-
7 chandise and chattels of every description, and all other
8 property by fire, and allied coverages, including lightning,
9 aircraft, windstorm, tornado, cyclone, hail, frost or snow,
10 smoke, weather or climatic conditions, including excess or
11 deficiency of moisture, flood, rain or drought, business in-
12 terruptions, riot attending a strike or civil commotion, riot,
13 vehicle and by explosion whether fire ensues or not;

14 (2) Loss or damage by insects or disease to farm crops
15 or products and loss of rental value of land used in
16 producing such crops or products;

17 (3) Loss or damage by water or other fluid to any goods
18 or premises arising from the breakage or leakage of
19 sprinklers, pumps or other apparatus erected for extin-
20 guishing fires, or of other conduits or containers, or by
21 water entering through leaks or openings in buildings
22 and of water pipes, and against accidental injury to such
23 sprinklers, pumps, apparatus, conduits, containers or
24 water pipes;

25 (4) Loss or damage to domestic farm animals by dogs
26 or wild animals.

27 (b) The commissioner may, for good cause shown or
28 on application of the company, limit the license of a
29 company to make insurance to any one or more of the
30 perils or coverages set forth in paragraph (a) of this
31 section.

32 (c) In addition any such company may apply to the
33 commissioner for an extension of its license, and upon
34 complying with reasonable standards established by the
35 commissioner to assure the solvency of such company
36 and the protection of its policyholders, may in the dis-
37 cretion of the commissioner be granted an extension of
38 its license to permit such company to issue policies of
39 insurance on risks located in this state insuring against
40 one or more of the following:

41 (1) Legal liability for the death, injury, or disability
42 of any human being, or for damage to property, excluding
43 liability resulting from the ownership, maintenance, or
44 use of vehicles or aircraft; and provisions for medical,
45 hospital, surgical and disability benefits to injured per-
46 sons and funeral and death benefits to dependents, bene-
47 ficiaries or personal representatives of persons killed, ir-
48 respective of legal liability of the insured, when issued
49 as an incidental coverage with or supplemental to such
50 liability coverage.

51 (2) Loss or damage to property by burglary, theft, lar-
52 ceny, robbery, vandalism, malicious mischief, or wrong-
53 ful conversion, or any attempt at any of the foregoing.

54 (3) Personal property floater insurance.

Sec. 9. *Premiums, Membership Fees, Assessments and*
2 *Dividends.*—(a) Such company shall collect from its
3 members such initial fees or charges as its by-laws pro-
4 vide.

5 (b) Any such company may levy assessments or collect
6 premiums for the purpose of paying losses and expenses
7 already incurred, or for estimated future losses and ex-
8 penses, and for reserve or surplus fund purposes. The
9 secretary of any such company shall notify every member
10 of the company of the amount due by a written or printed
11 notice, mailed to the last known address of each member,
12 stating the amount due the company from the member
13 and the time and place and to whom it shall be paid.
14 Such payment shall be made by the member within sixty
15 days from date of mailing such notice, or within a lesser
16 period, as the by-laws may provide. The company may
17 maintain an action against any member thereof to re-
18 cover all such assessments which he may neglect or re-
19 fuse to pay when legally due and payable.

20 (c) Any such company issuing policies at rates other
21 than uniform or class rates or levying assessments on
22 other than a uniform or class basis shall as to such policies
23 be a subscriber to a rating organization licensed under
24 the provisions of article twenty of this chapter.

25 (d) Such company may return to its members in the

26 form of dividends or otherwise savings or earnings of
27 such company.

Sec. 10. *Contingent Liability of Member.*—The contin-
2 gent liability of a member of such company may, with
3 the approval of the commissioner, be limited to one or
4 more times the annual premium as computed for the
5 policy, and the company may issue a policy without con-
6 tingent liability to the member if at the time of issuance
7 it has a surplus of not less than one hundred thousand
8 dollars and maintains unearned premium and other re-
9 serves on the same basis as that required of domestic
10 insurers transacting like kinds of insurance. In the ab-
11 sence of such limitation of contingent liability each
12 member shall be liable for his pro-rata share of losses
13 and expenses of the company, including a reasonable con-
14 tribution to a surplus fund.

Sec. 11. *Reserves, Surplus or Emergency Fund.*—(a)
2 Each such company is authorized to accumulate a surplus
3 or emergency fund in such amount as may be deemed
4 advisable by its board of directors.

5 (b) The first twenty-five thousand dollars of such ac-
6 cumulated surplus shall be in cash or invested in gov-
7 ernment securities described in section seven of article
8 eight of this chapter, and the balance of such surplus
9 may be invested in any of the other classes of investments
10 described in said article eight, subject to the limitations
11 as to each such class provided therein.

12 (c) All assets of such company other than such accu-
13 mulated surplus shall be in cash or invested in the gov-
14 ernment securities described in section seven of article
15 eight of this chapter.

Sec. 12. *Limit of Risk.*—No such company shall insure
2 any single risk comprising a building and contents or
3 other property so located as to be subject to destruction
4 by a single fire for a greater amount than one thousand
5 dollars until its insurance in force shall be as much as
6 five hundred thousand dollars, nor shall it then insure
7 any such risks for an amount greater than one-fifth of
8 one percent of the net insurance in force under its policies,

9 or ten percent of its surplus, whichever is greater, unless
10 the risks insured by the company in excess of the amounts
11 above stipulated are simultaneously covered by rein-
12 surance.

2 Sec. 13. *Reinsurance; Joint Policies.*—(a) Such com-
3 pany may procure reinsurance on any or all of its risks
4 in licensed insurers transacting like kinds of insurance;
5 and such company may issue policies of reinsurance to
6 other licensed insurers transacting like kinds of insur-
7 ance.

8 (b) Two or more such companies may issue policies
9 jointly.

2 Sec. 14. *Notices to Members.*—All notices of cancella-
3 tion of policies or reduction thereof and all other notices
4 to members required by this article shall be delivered
5 personally or mailed in a sealed envelope addressed to the
6 last known address of the member and when so given
7 they shall be deemed sufficient and binding upon the
8 member so notified.

2 Sec. 15. *Termination, Cancellation and Suspension of*
3 *Membership.*—(a) Any member of a company may with-
4 draw therefrom upon written notice to the company.
5 Every member so withdrawing shall immediately sur-
6 render his policy and pay to the extent of his liability
7 as stated in the policy, all of his indebtedness legally due
8 the company.

9 (b) No member shall be liable for losses or expenses
10 occurring subsequent to the time of termination of his
11 membership.

12 (c) The company may cancel any policy upon at least
13 five days written notice to the holder.

14 (d) A company may, in its by-laws, provide for the
15 suspension of its liability for loss upon any policy from
16 the date when an unpaid assessment becomes due if notice
17 is given to the member five days before the suspension
18 is to become effective, and the payment of such assess-
19 ment shall only reinstate such policy from the date of
20 such payment, but no allowance shall be made in any
assessment because of such suspension.

2 Sec. 16. *Fees.*—Such company at the time of making
3 its annual report shall pay to the commissioner a filing
4 fee of five dollars, all fees so collected to go into the
5 fund for the purposes specified in section thirteen of
6 article three of this chapter. No other fees or taxes shall
7 be levied against such companies except the agent's license
8 fee and the expenses of examination thereof by the com-

2 Sec. 17. *Dissolution, Member's Share of Assets.*—Upon
3 the liquidation of any such company, the share of each
4 member in the assets shall be computed and distributed
5 in the manner provided in section twenty-nine of article
6 five of this chapter for computing and distributing the
7 share of members of other types of domestic mutual in-

2 Sec. 18. *Mergers and Consolidations.*—(a) No farmers'
3 mutual fire insurance company shall merge or consolidate
4 with any stock insurer or with any other type of mutual
5 insurer.

6 (b) A farmers' mutual fire insurance company may
7 merge or consolidate with another farmers' mutual fire
8 insurance company in the manner provided in section
9 twenty-eight of article five of this chapter for the merger
10 or consolidation of other types of domestic mutual in-

2 Sec. 19. *Conversion to Stock or Mutual Insurer.*—(a) A
3 farmers' mutual fire insurance company may become a
4 stock insurer in the manner provided in section twenty-
5 four of article five of this chapter for converting other
6 types of domestic mutual insurers to domestic stock in-

7 (b) A farmers' mutual fire insurance company may be-
8 come a domestic mutual insurer pursuant to such plan
9 and procedure as may be approved in advance by the
10 commissioner, subject to approval by vote of not less
11 than three-fourths of the company's current members vot-
12 ing thereon in person, by proxy, or by mail at a meeting
13 of members called for that purpose pursuant to such
14 notice and procedure as may be approved by the commis-

15 sioner, and subject to such company as reorganized com-
16 plying with all requirements of this chapter relating to
17 the initial organization and licensing of a domestic mutual
18 insurer transacting like kinds of insurance as those pro-
19 posed to be transacted by the reorganized company.

Article 23. Fraternal Benefit Societies

Section

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26. Reinsurance.
27. Licensing of foreign and alien societies.
28. Term of license, renewal, refusal to license, revocation or suspension, penalty in lieu thereof, reissuance.
29. Fees and taxation.
30. Funds.
31. Investments.
32. Reports and valuations.
33. Agents.
34. Exemption of certain societies.

Section 1. *Scope of Article.*—Every fraternal benefit
2 society shall be governed by the provisions of this article
3 and by no other provisions of this chapter except such
4 provisions as are specifically made applicable and referred
5 to in this article.

Sec. 2. *Other Provisions Applicable.*—Every fraternal
2 benefit society shall be governed and be subject, to the
3 same extent as other insurers transacting like kinds of
4 insurance, to the following articles of this chapter: article

5 one (definitions), article two (insurance commissioner),
6 article four (general provisions), article ten (rehabilita-
7 tion and liquidation), and article eleven (unfair practices
8 and frauds).

Sec. 3. *Fraternal Benefit Societies Defined.*—Any in-
2 corporated society, order or supreme lodge, without capital
3 stock, including one exempted under the provisions of
4 subparagraph (2) of paragraph (a) of section thirty-four
5 of this article, whether incorporated or not, conducted
6 solely for the benefit of its members and their benefici-
7 aries and not for profit, operated on a lodge system with
8 ritualistic form of work, having a representative form of
9 government, and which makes provision for the payment
10 of benefits in accordance with this article, is hereby de-
11 clared to be a fraternal benefit society. When used in
12 this article the word “society”, unless otherwise indicated,
13 shall mean fraternal benefit society.

Sec. 4. *Lodge System Defined.*—A society having a
2 supreme legislative or governing body and subordinate
3 lodges or branches by whatever name known, into which
4 members are elected, initiated or admitted in accordance
5 with its constitution, laws, ritual and rules, which sub-
6 ordinate lodges or branches shall be required by the laws
7 of the society to hold regular meetings at least once in
8 each month, shall be deemed to be operating on the lodge
9 system.

Sec. 5. *Representative Form of Government Defined.*—
2 A society shall be deemed to have a representative form
3 of government when:
4 - (a) it provides in its constitution or laws for a supreme
5 legislative or governing body, composed of representa-
6 tives elected either by the members or by delegates elected
7 directly or indirectly by the members, together with such
8 other members of such body as may be prescribed by the
9 society’s constitution and laws;
10 (b) the representatives elected constitute a majority
11 in number and have not less than two-thirds of the votes
12 nor less than the votes required to amend its constitution
13 and laws;

14 (c) the meetings of the supreme legislative or govern-
15 ing body and the election of officers, representatives or
16 delegates are held as often as once in four calendar years;

17 (d) each insured member shall be eligible for election
18 to act or serve as a delegate to such meeting;

19 (e) the society has a board of directors charged with
20 the responsibility for managing its affairs in the interim
21 between meetings of its supreme legislative or governing
22 body, subject to control by such body and having powers
23 and duties delegated to it in the constitution or laws of
24 the society;

25 (f) such board of directors is elected by the supreme
26 legislative or governing body, except in case of filling a
27 vacancy in the interim between meetings of such body;

28 (g) the officers are elected either by the supreme legis-
29 lative or governing body or by the board of directors;
30 and

31 (h) the members, officers, representatives or delegates
32 shall not vote by proxy.

Sec. 6. *Organization.*—The organization of a domestic
2 society shall be governed as follows:

3 (a) Seven or more citizens of the United States, a ma-
4 jority of whom are citizens of this state, who desire to
5 form a fraternal benefit society, may make, sign and
6 acknowledge before some officer, competent to take
7 acknowledgment of deeds, articles of incorporation, in
8 which shall be stated:

9 (1) the proposed corporate name of the society, which
10 shall not so closely resemble the name of any society or
11 insurance company as to be misleading or confusing;

12 (2) the purposes for which it is being formed and the
13 mode in which its corporate powers are to be exercised.
14 Such purposes shall not include more liberal powers than
15 are granted by this article: *Provided*, That any lawful,
16 social, intellectual, educational, charitable, benevolent,
17 moral, fraternal or religious advantages may be set forth
18 among the purposes of the society; and

19 (3) the names and residences of the incorporators and
20 the names, residences and official titles of all the officers,

21 trustees, directors, or other persons who are to have and
22 exercise the general control of the management of the
23 affairs and funds of the society for the first year or until
24 the ensuing election at which all such officers shall be
25 elected by the supreme legislative or governing body,
26 which election shall be held not later than one year from
27 the date of the issuance of the permanent certificate.

28 (b) Such articles of incorporation, duly certified copies
29 of the constitution, laws and rules, copies of all proposed
30 forms of certificates, applications therefor, and circulars
31 to be issued by the society and a bond conditioned upon
32 the return to applicants of the advanced payments if
33 the organization is not completed within one year, such
34 bond to be in an amount to be determined by the com-
35 missioner not to exceed the sum of twenty-five thousand
36 dollars with sureties approved by the commissioner,
37 shall be filed with the commissioner, who may require
38 such further information as he deems necessary. All
39 documents filed are to be in the English language. If the
40 purposes of the society conform to the requirements of
41 this article and all provisions of law have been complied
42 with, the commissioner shall approve same in writing,
43 whereupon the incorporators may file such approved ar-
44 ticles with the secretary of state of this state and receive
45 a certificate of incorporation in the same manner as such
46 certificates are issued to other non-stock corporations.

47 (c) No certificate granted under the provisions of this
48 section shall be valid after one year from its date or after
49 such further period, not exceeding one year, as may be
50 authorized by the commissioner upon cause shown, unless
51 the five hundred applicants hereinafter required have
52 been secured and the organization has been completed
53 as herein provided. The articles of incorporation and all
54 other proceedings thereunder shall become null and void
55 in one year from the date of the certificate, or at the
56 expiration of the extended period, unless the society shall
57 have completed its organization and received a license as
58 hereinafter provided.

59 (d) Upon receipt of the certificate of incorporation, the
60 society may solicit members for the purpose of complet-
61 ing its organization, shall collect from each applicant the

62 amount of not less than one regular monthly premium
63 in accordance with its table of rates as provided by its
64 constitution and laws, and shall issue to each such ap-
65 plicant a receipt for the amount so collected. No society
66 shall incur any liability other than for the return of such
67 advance premium, nor issue any certificate, nor pay,
68 allow, or offer or promise to pay or allow, any death or
69 disability benefit to any person until:

70 (1) actual bona fide applications for death benefits have
71 been secured aggregating at least five hundred thousand
72 dollars on not less than five hundred lives;

73 (2) all such applicants for death benefits shall have
74 furnished evidence of insurability satisfactory to the so-
75 ciety;

76 (3) certificates of examinations or acceptable declara-
77 tions of insurability have been duly filed and approved
78 by the chief medical examiner of the society;

79 (4) ten subordinate lodges or branches have been
80 established into which the five hundred applicants have
81 been admitted;

82 (5) there has been submitted to the commissioner,
83 under oath of the president or secretary, or corresponding
84 officer of the society, a list of such applicants, giving their
85 names, addresses, date each was admitted, name and num-
86 ber of the subordinate branch of which each applicant
87 is a member, amount of benefits to be granted and pre-
88 miums therefor; and

89 (6) it shall have been shown to the commissioner, by
90 sworn statement of the treasurer, or corresponding officer
91 of such society, that at least five hundred applicants have
92 each paid in cash at least one regular monthly premium as
93 herein provided, which premiums in the aggregate shall
94 amount to at least twenty-five hundred dollars, all of
95 which shall be credited to the fund or funds from which
96 benefits are to be paid and no part of which may be used
97 for expenses. Said advance premiums shall be held in
98 trust during the period of organization and if the society
99 has not qualified for a certificate of authority within one
100 year, as herein provided, such premiums shall be returned
101 to said applicants.

102 (e) The commissioner may make such examination
103 and require such further information as he deems ad-
104 visable. Upon presentation of satisfactory evidence that
105 the society has complied with all the provisions of law,
106 he shall issue to the society a license to transact insur-
107 ance pursuant to the provisions of this article. The license
108 shall be prima facie evidence of the existence of the
109 society at the date of such license. The commissioner
110 shall cause a record of such license to be made. A certified
111 copy of such record may be given in evidence with like
112 effect as the original license.

113 (f) Every society shall have the power to adopt a con-
114 stitution and laws for the government of the society, the
115 admission of its members, the management of its affairs
116 and the fixing and readjusting of the rates of its members
117 from time to time. It shall have the power to change,
118 alter, add to or amend such constitution and laws and
119 shall have such other powers as are necessary and inci-
120 dental to carrying into effect the objects and purposes of
121 the society.

Sec. 7. *Corporate Powers Retained.*—Any incorporated
2 society licensed to transact insurance in this state at the
3 time this article becomes effective may thereafter exer-
4 cise all the rights, powers and privileges prescribed in
5 this article and in its charter, articles of incorporation
6 and license as far as consistent with this article. A do-
7 mestic incorporated society shall not be required to re-
8 incorporate.

Sec. 8. *Existing Voluntary Associations.*—(a) After
2 one year from the effective date of this article, no unin-
3 corporated or voluntary association shall be permitted
4 to transact business in this state.

5 (b) Any domestic voluntary association now licensed
6 to transact insurance in this state may incorporate and
7 shall receive from the commissioner a license as a fra-
8 ternal benefit society when:

9 (1) it shall have completed its conversion to an incor-
10 porated society not later than one year from the effective
11 date of this article;

12 (2) it has filed its articles of incorporation and has
13 satisfied the other requirements described in section six
14 of this article; and

15 (3) the commissioner shall have made such examina-
16 tion and procured whatever additional information he
17 shall deem advisable.

18 (c) Every voluntary association so incorporated shall
19 incur the obligations and enjoy the benefits thereof the
20 same as though originally incorporated, and such cor-
21 poration shall be deemed a continuation of the original
22 voluntary association. The officers thereof shall serve
23 through their respective terms as provided in its original
24 articles of association, but their successors shall be elected
25 and serve as provided in its articles of incorporation.
26 Incorporation of a voluntary association shall not affect
27 existing suits, claims or contracts.

Sec. 9. *Office and Meetings of Domestic Society.*—The
2 principal office of any domestic society shall be located
3 in this state. The meetings of its supreme legislative or
4 governing body may be held in any state, district, prov-
5 ince or territory wherein such society has at least five
6 subordinate branches and all business transacted at such
7 meetings shall be as valid in all respects as if such meet-
8 ings were held in this state.

Sec. 10. *Consolidations and Mergers.*—(a) A domestic
2 society may make application to consolidate or merge
3 with any other society by filing with the commissioner:

4 (1) a certified copy of the written contract containing
5 in full the terms and conditions of the consolidation or
6 merger;

7 (2) a sworn statement by the president and secretary
8 or corresponding officers of each society showing the
9 financial condition thereof on a date fixed by the com-
10 missioner but not earlier than December thirty-first, next
11 preceding the date of the contract;

12 (3) a certificate of such officers, duly verified by their
13 respective oaths, that the consolidation or merger has
14 been approved by a two-thirds vote of the supreme legis-
15 lative or governing body of each society; and

16 (4) evidence that at least sixty days prior to the ac-
17 tion of the supreme legislative or governing body of each
18 society, the text of the contract has been furnished to
19 all members of each society either by mail or by publi-
20 cation in full in the official organ of each society.

21 (b) If the commissioner finds that the contract is in
22 conformity with the provisions of this section, that the
23 financial statements are correct and that the consolida-
24 tion or merger is just and equitable to the members of
25 each society, he shall approve the contract and issue his
26 certificate to such effect. Upon such approval, the con-
27 tract shall be in full force and effect unless any society
28 which is a party to the contract is incorporated under
29 the laws of any other state or territory. In such event
30 the consolidation or merger shall not become effective
31 unless and until it has been approved as provided by the
32 laws of such state or territory and a certificate of such
33 approval filed with the commissioner or, if the laws of
34 such state or territory contain no such provision, then
35 the consolidation or merger shall not become effective
36 unless and until it has been approved by the insurance
37 supervisory official of such state or territory and a cer-
38 tificate of such approval filed with the commissioner.

39 (c) Upon the consolidation or merger becoming effec-
40 tive as herein provided, all the rights, franchises and in-
41 terests of the consolidated or merged societies in and to
42 every species of property, real, personal or mixed, and
43 things in action thereunto belonging shall be vested in
44 the society resulting from or remaining after the con-
45 solidation or merger without any other instrument, ex-
46 cept that conveyances of real property may be evidenced
47 by proper deeds, and the title to any real estate or in-
48 terest therein, vested under the laws of this state in any
49 of the societies consolidated or merged, shall not revert
50 or be in any way impaired by reason of the consolidation
51 or merger, but shall vest absolutely in the society re-
52 sulting from or remaining after such consolidation or
53 merger.

54 (d) The affidavit of any officer of the society or of any-
55 one authorized by it to mail any notice or document,

56 stating that such notice or document has been duly ad-
57 dressed and mailed, shall be prima facie evidence that
58 such notice or document has been furnished the ad-
59 dressees.

Sec. 11. *Conversion of Society to Mutual Life Insurer.*—

2 Any domestic fraternal benefit society may be converted
3 and licensed as a mutual life insurance company by com-
4 pliance with all the requirements of this chapter for the
5 initial licensing of a domestic mutual life insurer, if such
6 plan of conversion has been approved by the commissioner.
7 Such plan shall be prepared in writing setting forth in
8 full the terms and conditions thereof. The board of di-
9 rectors shall submit such plan to the supreme legislative
10 or governing body of such society at any regular or special
11 meeting thereof, by giving a full, true and complete copy
12 of such plan with the notice of such meeting. Such notice
13 shall be given as provided in the laws of the society for
14 the convocation of a regular or special meeting of such
15 body, as the case may be. The affirmative vote of two-
16 thirds of all members of such body shall be necessary for
17 the approval of such agreement. No such conversion shall
18 take effect unless and until approved by the commissioner
19 who may give such approval if he finds that the proposed
20 change is in conformity with the requirements of law and
21 not prejudicial to the certificate holders of the society.

Sec. 12. *Qualifications for Membership.*—(a) A society

2 may admit to benefit membership any person not less than
3 fifteen years of age, nearest birthday, who has furnished
4 evidence of insurability acceptable to the society. Any
5 such member who shall apply for additional benefits more
6 than six months after becoming a benefit member shall
7 pass an additional medical examination, or make an
8 additional declaration of insurability, as required by the
9 society.

10 (b) Any person admitted prior to attaining the full age
11 of twenty-one years shall be bound by the terms of the
12 application and certificate and by all the laws and rules
13 of the society and shall be entitled to all the rights and
14 privileges of membership therein to the same extent as
15 though the age of majority had been attained at the time

16 of application. A society may also admit general or social
17 members who shall have no voice or vote in the manage-
18 ment of its insurance affairs.

Sec. 13. *Amendment of Articles of Incorporation, Con-*
2 *stitution and Laws.*—(a) A domestic society may amend
3 its articles of incorporation, constitution or laws in accord-
4 ance with the provisions thereof by action of its supreme
5 legislative or governing body at any regular or special
6 meeting thereof or, if its articles of incorporation, consti-
7 tution or laws so provide, by referendum. Such referen-
8 dum may be held in accordance with the provisions of
9 its article of incorporation, constitution or laws by the
10 vote of the voting members of the society, by the vote
11 of delegates or representatives of voting members or
12 by the vote of local lodges or branches. No amend-
13 ment submitted for adoption by referendum shall be
14 adopted unless, within six months from the date of sub-
15 mission thereof, a majority of all of the voting members
16 of the society shall have signified their consent to such
17 amendment by one of the methods herein specified.

18 (b) No amendment to the articles of incorporation,
19 constitution or laws of any domestic society shall take
20 effect unless approved by the commissioner who shall
21 approve such amendment if he finds that it has been duly
22 adopted and is not inconsistent with any requirement of
23 the laws of this state or with the character, objects and
24 purposes of the society. Unless the commissioner shall
25 disapprove any such amendment within sixty days after
26 the filing of same, such amendment shall be considered
27 approved. The approval or disapproval of the commis-
28 sioner shall be in writing and mailed to the secretary or
29 corresponding officer of the society at its principal office.
30 In case he disapproves such amendment, the reasons
31 therefor shall be stated in such written notice.

32 (c) Within ninety days from the approval thereof by
33 the commissioner, all such amendments, or a synopsis
34 thereof, shall be furnished to all members of the society
35 either by mail or by publication in full in the official organ
36 of the society. The affidavit of any officer of the society
37 or of anyone authorized by it to mail any amendments

38 or synopsis thereof, stating facts which show that same
39 have been duly addressed and mailed, shall be prima
40 facie evidence that such amendments or synopsis thereof,
41 have been furnished the addressee.

42 (d) Every foreign or alien society authorized to do
43 business in this state shall file with the commissioner a
44 duly certified copy of all amendments of, or additions to,
45 its articles of incorporation, constitution or laws within
46 ninety days after the enactment of same.

47 (e) Printed copies of the constitution or laws as amend-
48 ed, certified by the secretary or corresponding officer of
49 the society shall be prima facie evidence of the legal
50 adoption thereof.

Sec. 14. *Institutions.*—(a) It shall be lawful for a society
2 to create, maintain and operate charitable, benevolent or
3 educational institutions for the benefit of its members and
4 their families and dependents and for the benefit of child-
5 ren insured by the society. For such purpose it may own,
6 hold or lease personal property or real property located
7 within or without this state, with necessary buildings
8 thereon. Such property shall be reported in every annual
9 statement but shall not be allowed as an admitted asset of
10 such society.

11 (b) Maintenance, treatment and proper attendance in
12 any such institution may be furnished free or a reasonable
13 charge may be made therefor, but no such institution
14 shall be operated for profit. The society shall maintain a
15 separate accounting of any income and disbursements
16 under this section and report them in its annual statement.
17 No society shall own or operate funeral homes or under-
18 taking establishments.

Sec. 15. *Benefits Other Than Insurance Benefits.*—(a)
2 A society may pay benefits, other than insurance benefits
3 to its members from any special account or fund main-
4 tained for such purpose; provided that if such benefits
5 are of such a nature that they could constitute benefits
6 within the classes of insurance set forth in section seven-
7 teen of this article, a society making such payments may
8 not:

- 9 (1) make any separate charge therefor;
10 (2) issue any certificate, policy or other document
11 promising such payments;
12 (3) provide in its constitution, laws or any other docu-
13 ment that such payments may be received by the member
14 as a matter of right; or
15 (4) advertise such payments as insurance or as pay-
16 ments to which the member has any right.
17 (b) The society shall maintain a separate accounting
18 of all disbursements made under this section and report
19 them in its annual statement.

2 **Sec. 16. *No Personal Liability.***—The officers and mem-
3 bers of the supreme, grand or any subordinate body of a
4 society shall not be personally liable for payment of any
5 benefits provided by a society.

- 2 **Sec. 17. *Benefits.***—A society licensed in this state may
3 provide for the payment of:
4 (a) death benefits in any form;
5 (b) endowment benefits;
6 (c) annuity benefits;
7 (d) temporary or permanent disability benefits as a
8 result of disease occurring before age sixty-five or accident
9 at any age;
10 (e) hospital, medical or nursing benefits due to sickness
11 or bodily infirmity occurring before age sixty-five or acci-
12 dent at any age; and
13 (f) monument or tombstone benefits to the memory of
14 deceased members not exceeding in any case the sum of
three hundred dollars.

2 **Sec. 18. *Benefits on Lives of Children.***—(a) A society
3 may provide for benefits on the lives of children under the
4 minimum age for adult membership but not greater than
5 twenty-one years of age at time of application therefor,
6 upon the application of some adult person, as its laws or
7 rules may provide, which benefits shall be in accordance
8 with the provisions of section seventeen of this article.
9 A society may, at its option, organize and operate branches
for such children. Membership and initiation in local

10 lodges shall not be required of such children, nor shall
11 they have a voice in the management of the society.

12 (b) Children insured under certificates issued pursuant
13 to this section shall be transferred to and become mem-
14 bers of the adult branch of the society upon attaining the
15 minimum age for adult membership under the laws of the
16 society.

17 (c) A society shall have power to provide for the desig-
18 nation and changing of designation of beneficiaries in the
19 certificates providing for such benefits and to provide in
20 all other respects for the regulation, government and con-
21 trol of such certificates and all rights, obligations and
22 liabilities incident thereto and connected therewith.

Sec. 19. *Nonforfeiture Benefits, Cash Surrender Values,*
2 *Loans and Options.*—(a) A society may grant paid-up
3 nonforfeiture benefits, cash surrender values, certificate
4 loans and such other options as its laws may permit. As
5 to certificates issued on and after the effective date of this
6 article, a society shall grant at least one paid-up nonfor-
7 feiture benefit.

8 (b) In the case of certificates other than those for which
9 reserves are computed on the Commissioners 1941 Stan-
10 dard Ordinary Mortality Table or the 1941 Standard In-
11 dustrial Table, the value of every paid-up nonforfeiture
12 benefit and the amount of any cash surrender value, loan
13 or other option granted shall not be less than the excess,
14 if any, of (1) over (2) as follows:

15 (1) the reserve under the certificate determined on the
16 basis specified in the certificate; and

17 (2) the sum of any indebtedness to the society on the
18 certificate, including interest due and accrued, and a sur-
19 render charge equal to two and one-half percent of the
20 face amount of the certificate, which, in the case of insur-
21 ance on the lives of children, shall be the ultimate face
22 amount of the certificate, if death benefits provided therein
23 are graded.

24 (c) However, in the case of certificates issued on a sub-
25 standard basis or in the case of certificates, the reserves
26 for which are computed upon the American Men Ultimate

27 Table of Mortality, the term of any extended insurance
28 benefit granted including accompanying pure endowment,
29 if any, may be computed upon the rates of mortality not
30 greater than one hundred thirty percent of those shown
31 by the mortality table specified in the certificate for the
32 computation of the reserve.

33 (d) In the case of certificates for which reserves are
34 computed on the Commissioners 1941 Standard Ordinary
35 Mortality Table or the 1941 Standard Industrial Table,
36 every paid-up nonforfeiture benefit and the amount of any
37 cash surrender value, loan or other option granted shall
38 not be less than the corresponding amount ascertained in
39 accordance with the provisions of the laws of this state
40 applicable to life insurance companies issuing policies con-
41 taining like insurance benefits based upon such tables.

Sec. 20. *Beneficiaries.*—(a) The member shall have the
2 right at all times to change the beneficiary or beneficiaries
3 in accordance with the constitution, laws or rules of the
4 society. Every society by its constitution, laws or rules
5 may limit the scope of beneficiaries and shall provide that
6 no beneficiary shall have or obtain any vested interest in
7 the proceeds of any certificate until the certificate has
8 become due and payable in conformity with the provisions
9 of the insurance contract.

10 (b) A society may make provision for the payment of
11 funeral benefits to the extent of such portion of any pay-
12 ment under a certificate as might reasonably appear to be
13 due to any person equitably entitled thereto by reason of
14 having incurred expense occasioned by the burial of the
15 member, provided the portion so paid shall not exceed the
16 sum of five hundred dollars.

17 (c) If, at the death of any member, there is no lawful
18 beneficiary to whom the insurance benefits shall be pay-
19 able, the amount of such benefits, except to the extent
20 that funeral benefits may be paid as hereinbefore pro-
21 vided, shall be payable to the personal representative of
22 the deceased member.

Sec. 21. *Benefits Not Attachable.*—No money or other
2 benefit, charity, relief or aid to be paid, provided or ren-

3 dered by any society, shall be liable to attachment, gar-
4 nishment or other process, or to be seized, taken, appropri-
5 ated or applied by any legal or equitable process or oper-
6 ation of law to pay any debt or liability of a member or
7 beneficiary, or any other person who may have a right
8 thereunder, either before or after payment by the society.

Sec. 22. *The Contract.*—(a) Every society licensed in
2 this state shall issue to each benefit member a certificate
3 specifying the amount of benefits provided thereby. The
4 certificate, together with any riders or endorsements
5 attached thereto, the charter or articles of incorporation,
6 the constitution and laws of the society, the application
7 for membership, and declaration of insurability, if any,
8 signed by the applicant, and all amendments to each there-
9 of, shall constitute the agreement, as of the date of issu-
10 ance, between the society and the member, and the certifi-
11 cate shall so state. A copy of the application for member-
12 ship and of the declaration of insurability, if any, shall be
13 endorsed upon or attached to the certificate.

14 (b) All statements purporting to be made by the mem-
15 ber shall be representations and not warranties. Any
16 waiver of this provision shall be void.

17 (c) Any changes, additions or amendments to the char-
18 ter or articles of incorporation, constitution or laws duly
19 made or enacted subsequent to the issuance of the certifi-
20 cate, shall bind the member and the beneficiaries, and
21 shall govern and control the agreement in all respects the
22 same as though such changes, additions or amendments
23 had been made prior to and were in force at the time of
24 the application for membership, except that no change,
25 addition, or amendment shall destroy or diminish benefits
26 which the society contracted to give the member as of the
27 date of issuance.

28 (d) Copies of any of the documents mentioned in this
29 section, certified by the secretary or corresponding officer
30 of the society, shall be received as evidence of the terms
31 and conditions thereof.

32 (e) A society shall provide in its constitution or laws
33 and in its certificates that if its reserves as to all or any

34 class of certificates become impaired its board of directors
35 or corresponding body may require that there shall be
36 paid by the member to the society the amount of the mem-
37 ber's equitable proportion of such deficiency as ascertained
38 by its board, and that if the payment be not made it shall
39 stand as an indebtedness against the certificate and draw
40 interest not to exceed five percent per annum compounded
41 annually.

Sec. 23. *Standard and Prohibited Provisions.*—(a) No
2 life benefit certificate shall be delivered or issued for
3 delivery in this state unless a copy of the form shall have
4 been filed with the commissioner and approved by him as
5 conforming to the requirements of this section and not
6 inconsistent with any other provisions of law applicable
7 thereto. A certificate shall be deemed approved unless
8 disapproved by the commissioner within sixty days of the
9 date of such filing.

10 (b) The certificate shall contain in substance the follow-
11 ing standard provisions or, in lieu thereof, provisions which
12 are more favorable to the member:

13 (1) title on the face and filing page of the certificate
14 clearly and correctly describing its form;

15 (2) a provision stating the amount of rates, premiums
16 or other required contributions, by whatever name known,
17 which are payable by the insured under the certificate;

18 (3) a provision that the member is entitled to a grace
19 period of not less than a full month (or thirty days at the
20 option of the society) in which the payment of any pre-
21 mium after the first, may be made. During such grace
22 period the certificate shall continue in full force, but in
23 case the certificate becomes a claim during the grace
24 period before the overdue payment is made, the amount
25 of such overdue payment or payments may be deducted in
26 any settlement under the certificate;

27 (4) a provision that the member shall be entitled to
28 have the certificate reinstated at any time within three
29 years from the due date of the premium in default, unless
30 the certificate has been completely terminated through
31 the application of a nonforfeiture benefit, cash surrender

32 value or certificate loan, upon the production of evidence
33 of insurability satisfactory to the society and the payment
34 of all overdue premiums and any other indebtedness to
35 the society upon the certificate, together with interest on
36 such premiums and such indebtedness, if any, at a rate
37 not exceeding six percent per annum compounded annu-
38 ally;

39 (5) except in the case of pure endowment, annuity or
40 reversionary annuity contracts, reducing term insurance
41 contracts, or contracts of term insurance of uniform
42 amount of fifteen years or less expiring before age sixty-
43 six, a provision that, in the event of default in payment
44 of any premium after three full years' premiums have
45 been paid or after premiums for a lesser period have been
46 paid if the contract so provides, the society will grant,
47 upon proper request not later than sixty days after the
48 due date of the premium in default, a paid-up nonforfeiture
49 benefit on the plan stipulated in the certificate,
50 effective as of such due date, of such value as specified in
51 this article. The certificate may provide, if the society's
52 laws so specify or if the member shall so elect prior to the
53 expiration of the grace period of any overdue premium,
54 that default shall not occur so long as premiums can be
55 paid under the provisions of an arrangement for auto-
56 matic premium loan as may be set forth in the certificate;

57 (6) a provision that one paid-up nonforfeiture benefit
58 as specified in the certificate shall become effective auto-
59 matically unless the member elects another available paid-
60 up nonforfeiture benefit, not later than sixty days after
61 the due date of the premium in default;

62 (7) a statement of the mortality table and rate of
63 interest used in determining all paid-up nonforfeiture
64 benefits and cash surrender options available under the
65 certificate, and a brief general statement of the method
66 used in calculating such benefits;

67 (8) a table showing in figures the value of every paid-up
68 nonforfeiture benefit and cash surrender option available
69 under the certificate for each certificate anniversary either
70 during the first twenty certificate years or during the term
71 of the certificate whichever is shorter;

72 (9) a provision that the certificate shall be incontestable
73 after it has been in force during the lifetime of the member
74 for a period of two years from its date of issue except for
75 nonpayment of premiums, violation of the provisions of
76 the certificate relating to military, aviation, or naval serv-
77 ice and violation of the provisions relating to suspension
78 or expulsion as substantially set forth in the certificate.
79 At the option of the society, supplemental provisions re-
80 lating to benefits in the event of temporary or permanent
81 disability or hospitalization and provisions which grant
82 additional insurance specifically against death by accident
83 or accidental means, may also be excepted. The certificate
84 shall be incontestable on the ground of suicide after it has
85 been in force during the lifetime of the member for a
86 period of two years from date of issue. The certificate may
87 provide, as to statements made to procure reinstatement,
88 that the society shall have the right to contest a reinstated
89 certificate within a period of two years from date of re-
90 instatement with the same exceptions as herein provided;

91 (10) a provision that in case the age of the member or
92 of the beneficiary is considered in determining the pre-
93 mium and it is found at any time before final settlement
94 under the certificate that the age has been misstated, and
95 the discrepancy and premium involved have not been
96 adjusted, the amount payable shall be such as the premium
97 would have purchased at the correct age; but if the correct
98 age was not an insurable age under the society's charter
99 or laws, only the premium paid to the society, less any pay-
100 ments previously made to the member, shall be returned
101 or, at the option of the society, the amount payable under
102 the certificate shall be such as the premium would have
103 purchased at the correct age according to the society's
104 promulgated rates and any extension thereof based on
105 actuarial principles;

106 (11) a provision or provisions which recite fully, or
107 which set forth the substance of, all sections of the charter,
108 constitution, laws, rules or regulations of the society, in
109 force at the time of issuance of the certificate, the violation
110 of which will result in the termination of, or in the re-

111 duction of, the benefit or benefits payable under the cer-
112 tificate;

113 (12) if the constitution or laws of the society provide
114 for expulsion or suspension of a member, any member so
115 expelled or suspended, except for nonpayment of a pre-
116 mium or within the contestable period for material mis-
117 representations in such member's application for member-
118 ship shall have the privilege of maintaining his insurance
119 in force by continuing payment of the required premium;
120 and

121 (13) in the case of a certificate issued by a foreign or
122 alien society, a provision that the rights or obligations of
123 the member or of any person rightfully claiming under
124 the certificate shall be governed by the laws of this state.

125 (c) Any of the foregoing provisions set forth in para-
126 graph (b) of this section, or portions thereof, not appli-
127 cable by reason of the plan of insurance or because the
128 certificate is an annuity certificate may, to the extent in-
129 applicable, be omitted from the certificate.

130 (d) No life benefit certificate shall be delivered or
131 issued for delivery in this state containing in substance
132 any of the following provisions:

133 (1) any provision limiting the time within which any
134 action at law or in equity may be commenced to less than
135 two years after the cause of action shall accrue;

136 (2) any provision by which the certificate shall purport
137 to be issued or to take effect more than six months before
138 the original application for the certificate was made, ex-
139 cept in case of transfer from one form of certificate to
140 another in connection with which the member is to receive
141 credit for any reserve accumulation under the form of
142 certificate from which the transfer is made; or

143 (3) any provision for forfeiture of the certificate for
144 failure to repay any loan thereon or to pay interest on
145 such loan while the total indebtedness, including interest,
146 is less than the loan value of the certificate.

147 (e) The word "premiums" as used in this article means
148 premiums, rates, or other required contributions by what-
149 ever name known.

Sec. 24. *Filing and Approval of Accident and Sickness Insurance Certificates.*—No domestic, foreign or alien society licensed in this state shall issue or deliver in this state any certificate or other evidence of any contract of accident and sickness insurance unless and until the form thereof, together with the form of application and all riders or endorsements for use in connection therewith, shall have been filed with the commissioner and approved by him as conforming to reasonable rules and regulations from time to time made by him and as not inconsistent with any other provisions of law applicable thereto. The commissioner shall, within a reasonable time after the filing of any such form, notify the society filing the same either of his approval or of his disapproval of such form. The commissioner may approve any such form which in his opinion contains provisions on any one or more of the several requirements made by him which are more favorable to the members than the one or ones so required. Pursuant to the foregoing provisions the commissioner shall have power, from time to time, to make, alter and supersede reasonable regulations prescribing the required, optional and prohibited provisions in such contracts. and such regulations shall conform, as far as practicable, to the provisions of article fifteen (accident and sickness insurance) and article sixteen (group accident and sickness insurance) of this chapter. Where the commissioner deems inapplicable, either in part or in their entirety, the provisions of the foregoing articles, he may prescribe the portions or summary thereof of the contract to be printed on the certificate issued to the member. Any filing made hereunder shall be deemed approved unless disapproved within sixty days from the date of such filing.

Sec. 25. *Waiver.*—The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the society. Such provision shall be binding on the society and every member and beneficiary of a member.

Sec. 26. *Reinsurance.*—A domestic society may, by an

2 authorized reinsurance agreement, cede any individual
3 risk or risks in whole or in part to an insurer (other than
4 another fraternal benefit society) having the power to
5 make such reinsurance; but no such society may reinsure
6 substantially all of its insurance in force without the
7 written permission of the commissioner.

Sec. 27. *Licensing of Foreign and Alien Societies.*—(a)

2 No foreign or alien society shall transact business in this
3 state without a license issued by the commissioner. Any
4 such society may be licensed to transact business in this
5 state upon filing with the commissioner.

6 (1) a duly certified copy of its charter or articles of
7 incorporation;

8 (2) a copy of its constitution and laws, certified by its
9 secretary or corresponding officer;

10 (3) a statement of its business under oath of its presi-
11 dent and secretary or corresponding officers in a form
12 prescribed by the commissioner, duly verified by an ex-
13 amination made by the supervising insurance official of its
14 home state or other state, territory, province or country,
15 satisfactory to the commissioner;

16 (4) a certificate from the proper official of its home
17 state, territory, province or country that the society is
18 legally incorporated and licensed to transact business
19 therein;

20 (5) copies of its certificate forms; and

21 (6) such other information as he may deem necessary;
22 and upon a showing that its assets are invested in accord-
23 ance with the provisions of this article.

24 (b) No license shall be issued to a foreign or alien
25 society desiring admission to this state unless such society
26 has the qualifications required of domestic societies orga-
27 nized under this article.

Sec. 28. *Term of License, Renewal, Refusal to License,*

2 *Revocation or Suspension, Penalty in Lieu Thereof, Re-*
3 *issuance.*—The term of license, renewal thereof, refusal
4 to license, revocation or suspension of license or penalty
5 in lieu thereof, and reissuance of license of all societies

6 shall be governed by the provisions of sections eight, nine,
7 ten, and eleven of article three of this chapter, to the same
8 extent that such sections are applicable to other insurers.

Sec. 29. *Fees and Taxation.*—(a) Each society shall pay
2 to the commissioner an annual license fee of twenty-five
3 dollars and a fee of ten dollars for filing the annual state-
4 ment of such society, all fees so collected to go into the
5 fund for the purposes specified in section thirteen of article
6 three of this chapter.

7 (b) Every society licensed under this article is hereby
8 declared to be a charitable and benevolent institution, and
9 all of its funds and assets shall be exempt from all state,
10 county, district and municipal taxes except taxes on real
11 property and office equipment.

Sec. 30. *Funds.*—(a) All assets shall be held, invested
2 and disbursed for the use and benefit of the society and
3 no member or beneficiary shall have or acquire individual
4 rights therein or become entitled to any apportionment
5 or the surrender of any part thereof, except as provided
6 in the contract.

7 (b) A society may create, maintain, invest, disburse
8 and apply any special fund or funds necessary to carry
9 out any purpose permitted by the laws of such society.

10 (c) Every society, the admitted assets of which are less
11 than the sum of its accrued liabilities and reserves under
12 all of its certificates when valued according to standards
13 required for certificates issued after one year from the
14 effective date of this article, shall, in every provision of
15 the laws of the society for payments by members of such
16 society, in whatever form made, distinctly state the pur-
17 pose of the same and the proportion thereof which may be
18 used for expenses, and no part of the money collected for
19 mortuary or disability purposes or the net accretions
20 thereto shall be used for expenses.

Sec. 31. *Investments.*—(a) A domestic society shall
2 invest its funds only in such investments as are authorized
3 by article eight of this chapter for the investment of the
4 assets of domestic insurers, except that paragraph (a) of

5 section six of article eight of this chapter shall not apply
6 to societies.

7 (b) Foreign and alien societies shall have investments
8 of the same general quality as required of domestic socie-
9 ties, except that other investments authorized by the laws
10 of such foreign or alien society's state or country of domi-
11 cile may be recognized as assets in the discretion of the
12 commissioner.

Sec. 32. *Reports and Valuations.*—In addition to the
2 annual statement required by section fourteen of article
3 four of this chapter, reports shall be filed and synopses
4 of annual statements shall be published in accordance
5 with the provisions of this section as follows:

6 (a) A synopsis of its annual statement providing an
7 explanation of the facts concerning the condition of the
8 society thereby disclosed shall be printed and mailed to
9 each benefit member of the society not later than the first
10 day of June of each year, or, in lieu thereof, such synopsis
11 may be published in the society's official publication.

12 (b) As a part of the annual statement required of each
13 society, it shall, on or before the first day of March, file
14 with the commissioner a valuation of its certificates in
15 force on December thirty-first last preceding provided,
16 the commissioner may, in his discretion for cause shown,
17 extend the time for filing such valuation for not more
18 than two calendar months. Such report of valuation shall
19 show, as reserve liabilities, the difference between the
20 present mid-year value of the promised benefits provided
21 in the certificates of such society in force and the present
22 mid-year value of the future net premiums as the same
23 are in practice actually collected, not including therein
24 any value for the right to make extra assessments and
25 not including any amount by which the present mid-year
26 value of future net premiums exceeds the present mid-
27 year value of promised benefits on individual certificates.
28 At the option of any society, in lieu of the above, the
29 valuation may show the net tabular value. Such net
30 tabular value as to certificates issued prior to one year
31 after the effective date of this article shall be determined
32 in accordance with the provisions of law applicable prior

33 to the effective date of this article and as to certificates
34 issued on or after one year from the effective date of this
35 article shall not be less than the reserves determined
36 according to the Commissioners' Reserve Valuation
37 method as hereinafter defined. If the premium charged
38 is less than the tabular net premium according to the
39 basis of valuation used, an additional reserve equal to
40 the present value of the deficiency in such premiums
41 shall be set up and maintained as a liability. The reserve
42 liabilities shall be properly adjusted in the event that the
43 mid-year or tabular values are not appropriate.

44 (c) Reserves according to the Commissioners' Reserve
45 Valuation method, for the life insurance and endowment
46 benefits of certificates providing for a uniform amount
47 of insurance and requiring the payment of uniform
48 premiums shall be the excess, if any, of the present value,
49 at the date of valuation, of such future guaranteed bene-
50 fits provided for by such certificates, over the then present
51 value of any future modified net premiums therefor. The
52 modified net premiums for any such certificate shall be
53 such uniform percentage of the respective contract pre-
54 miums for such benefits that the present value, at the
55 date of issue of the certificate, of all such modified net
56 premiums shall be equal to the sum of the then present
57 value of such benefits provided for by the certificate and
58 the excess of (1) over (2), as follows:

59 (1) a net level premium equal to the present value,
60 at the date of issue, of such benefits provided for after
61 the first certificate year, divided by the present value,
62 at the date of issue, of an annuity of one per annum
63 payable on the first and each subsequent anniversary of
64 such certificate on which a premium falls due: *Provided,*
65 *however,* That such net level annual premium shall not
66 exceed the net level annual premium on the nineteen
67 year premium whole life plan for insurance of the same
68 amount at an age one year higher than the age at issue
69 of such certificate; and

70 (2) a net one-year term premium for such benefits pro-
71 vided for in the first certificate year.

72 (d) Reserves according to the commissioners' reserve

73 valuation method for (1) life insurance benefits for vary-
74 ing amounts of benefits or requiring the payment of vary-
75 ing premiums, (2) annuity and pure endowment benefits,
76 (3) disability and accidental death benefits in all cer-
77 tificates and contracts, and (4) all other benefits except
78 life insurance and endowment benefits, shall be calcu-
79 lated by a method consistent with the principles of para-
80 graph (c) of this section.

81 (e) The present value of deferred payments due under
82 incurred claims or matured certificates shall be deemed
83 a liability of the society and shall be computed upon mor-
84 tality and interest standards prescribed in the following
85 subsection.

86 (f) Such valuation and underlying data shall be cer-
87 tified by a competent actuary or, at the expense of the
88 society, verified by the actuary of the department of in-
89 surance of the state of domicile of the society.

90 (g) The minimum standards of valuation for certificates
91 issued prior to one year from the effective date of this
92 article shall be those provided by the law applicable im-
93 mediately prior to the effective date of this article but
94 not lower than the standards used in the calculating of
95 rates for such certificates.

96 (h) The minimum standard of valuation for certificates
97 issued after one year from the effective date of this article
98 shall be three and one-half percent interest and the fol-
99 lowing tables:

100 (1) for certificates of life insurance—American Men
101 Ultimate Table of Mortality, with Bowerman's or Davis'
102 Extension thereof or with the consent of the commissioner,
103 the Commissioners 1941 Standard Ordinary Mortality
104 Table or the Commissioners 1941 Standard Industrial
105 Table of Mortality;

106 (2) for annuity certificates, including life annuities pro-
107 vided or available under optional modes of settlement in
108 such certificates—the 1937 Standard Annuity Table;

109 (3) for disability benefits issued in connection with
110 life benefit certificates—Hunter's Disability Table, which,
111 for active lives, shall be combined with a mortality table
112 permitted for calculating the reserves on life insurance

113 certificates, except that the table known as Class III Dis-
114 ability Table (1926) modified to conform to the con-
115 tractual waiting period, shall be used in computing re-
116 serves for disability benefits under a contract which
117 presumes that total disability shall be considered to be
118 permanent after a specified period;

119 (4) for accidental death benefits issued in connection
120 with life benefit certificates—the Inter-Company Double
121 Indemnity Mortality Table combined with a mortality
122 table permitted for calculating the reserves for life insur-
123 ance certificates; and

124 (5) for non-cancellable accident and sickness benefits—
125 the Class III Disability Table (1926) with conference
126 modifications or, with the consent of the commissioner,
127 tables based upon the society's own experience.

128 (i) The commissioner may, in his discretion, accept
129 other standards for valuation if he finds that the reserves
130 produced thereby will not be less in the aggregate than
131 reserves computed in accordance with the minimum valu-
132 ation standard herein prescribed. The commissioner may,
133 in his discretion, vary the standards of mortality appli-
134 cable to all certificates of insurance on substandard lives
135 or other extra hazardous lives by any society authorized
136 to do business in this state. Whenever the mortality
137 experience under all certificates valued on the same mor-
138 tality table is in excess of the expected mortality accord-
139 ing to such table for a period of three consecutive years,
140 the commissioner may require additional reserves when
141 deemed necessary in his judgment on account of such
142 certificates.

143 (j) Any society, with the consent of the insurance su-
144 pervisory official of the state of domicile of the society
145 and under such conditions, if any, which he may impose,
146 may establish and maintain reserves on its certificates in
147 excess of the reserves required thereunder, but the con-
148 tractual rights of any insured member shall not be
149 affected thereby.

Sec. 33. *Agents.* — Agents for societies shall not be
2 required to be licensed, but every society shall employ

3 or authorize only trustworthy and competent persons as
4 their agents.

Sec. 34. *Exemption of Certain Societies.*—(a) Nothing
2 contained in this article shall be so construed as to affect
3 or apply to:

4 (1) grand or subordinate lodges of societies, orders or
5 associations now doing business in this state which pro-
6 vide benefits exclusively through local or subordinate
7 lodges;

8 (2) orders, societies or associations which admit to
9 membership only persons engaged in one or more crafts
10 or hazardous occupations, in the same or similar lines of
11 business insuring only their own members, their families
12 and descendants of members and the ladies' societies or
13 ladies' auxiliaries to such orders, societies or associations;

14 (3) domestic societies which limit their membership
15 to employees of a particular city or town, designated
16 firm, business house or corporation which provide for a
17 death benefit of not more than four hundred dollars or
18 disability benefits of not more than three hundred fifty
19 dollars to any person in any one year, or both; or

20 (4) domestic societies or associations of a purely reli-
21 gious, charitable or benevolent description, which provide
22 for a death benefit of not more than four hundred dollars
23 or for disability benefits of not more than three hundred
24 fifty dollars to any one person in any one year, or both.

25 (b) Any such society or association described in sub-
26 paragraphs (3) or (4) of paragraph (a) of this section
27 which provides for death or disability benefits for which
28 benefit certificates are issued, and any such society or
29 association included in subparagraph (4) which has more
30 than one thousand members, shall not be exempted from
31 the provisions of this article but shall comply with all
32 requirements thereof.

33 (c) No society which, by the provisions of this section,
34 is exempt from the requirements of this article, except
35 any society described in subparagraph (2) of paragraph
36 (a) of this section, shall give or allow, or promise to give
37 or allow to any person any compensation for procuring
38 new members.

39 (d) Every society which provides for benefits in case
40 of death or disability resulting solely from accident, and
41 which does not obligate itself to pay natural death or sick
42 benefits shall have all of the privileges and be subject
43 to all the applicable provisions and regulations of this
44 article except that the provisions thereof relating to medi-
45 cal examination, valuations of benefit certificates, and
46 incontestability, shall not apply to such society.

47 (e) The commissioner may require from any society or
48 association, by examination or otherwise, such informa-
49 tion as will enable him to determine whether such society
50 or association is exempt from the provisions of this ar-
51 ticle.

52 (f) Societies, exempted under the provisions of this
53 section, shall also be exempt from all other provisions of
54 this chapter.

Article 24. Hospital Service Corporations and Medical Service Corporations

Section

1. Declaration of policy.
2. Definitions.
3. Corporations affected; eligibility of hospitals and physicians.
4. Exemptions; other laws applicable.
5. Licenses.
6. Supervision by commissioner; approval of contracts, forms, rates and fees.
7. Required provisions in contracts made by the corporations with hospitals, physicians and other health agencies.
8. Contract or certificate to be furnished to policyholders and subscribers; contracts with needy persons.
9. Payroll deduction of governmental employees.
10. Investments; bonds of corporate officers and employees.
11. Reciprocity with other service plans defined; payment authorized.

Section 1. *Declaration of Policy.*—In view of the desirability of making available to the people of this state increased hospital, medical services and other health services, the declared policy of the legislature in the enactment of this article is to encourage the organization, promotion and expansion of hospital service corporations and medical service corporations by exempting them from the payment of all taxes and from the operation of the general insurance laws of this state, but at the same time subjecting them to such regulation as may be necessary for the adequate protection of those members of the pub-

12 lic who subscribe for the services offered by such cor-
13 porations.

Sec. 2. *Definitions.*—For the purposes of this article:

2 (a) “Corporation” shall mean either a hospital service
3 corporation or a medical service corporation.

4 (b) “Hospital service corporation” shall mean a non-
5 profit, nonstock corporation, organized in accordance with
6 the provisions of article one of chapter thirty-one of this
7 Code for the sole purpose of contracting with the public
8 and with hospitals and other health agencies for hospital
9 or other health services to be furnished to subscribers
10 under terms of their contract with the corporation.

11 (c) “Hospital service” shall mean only such hospital
12 or other health care, to be provided by hospitals or other
13 health agencies, or such payment therefor, as may be
14 specified in the contract made by the subscriber with the
15 corporation.

16 (d) “Medical service corporation” shall mean a non-
17 profit, nonstock corporation, organized in accordance with
18 the provisions of article one of chapter thirty-one of this
19 Code for the sole purpose of contracting with the public
20 and with duly licensed physicians for medical or surgical
21 services and with other health agencies for other health
22 services to be furnished to subscribers under terms of
23 their contracts with the corporation, and controlled by a
24 board of directors, the majority of whom are duly licensed
25 physicians.

26 (e) “Medical service” shall mean only such medical,
27 surgical or other health care, to be provided by duly
28 licensed physicians or other health agencies, or such pay-
29 ment therefor, as may be specified in the contract made
30 by the subscriber with the corporation.

31 (f) “Service” shall mean such hospital, medical or other
32 health service as shall be provided under the terms of
33 the contracts issued by the corporation to subscribers.

34 (g) “Commissioner” shall mean the insurance commis-
35 sioner of West Virginia.

Sec. 3. *Corporations Affected; Eligibility of Hospitals
2 and Physicians.*—(a) Every such corporation operating

3 within this state shall be subject to the provisions of this
4 article.

5 (b) Every hospital or other health agency in this state
6 meeting the standards prescribed by the board of directors
7 of each such corporation shall be eligible for participation
8 in any hospital service plan operating in this state. Every
9 duly licensed physician or other health agency in this
10 state meeting the standards prescribed by the board of
11 directors of each such corporation shall be eligible for
12 participation in any medical service plan operating in this
13 state. The board of directors of every such corporation
14 may also prescribe standards for hospitals, physicians and
15 other health agencies located in states adjoining this
16 state, and all such hospitals, physicians and other health
17 agencies meeting such standards shall be eligible for par-
18 ticipation in such plans.

Sec. 4. *Exemptions; Other Laws Applicable.*—Every
2 such corporation is hereby declared to be a scientific,
3 nonprofit institution, and as such exempt from the pay-
4 ment of all property and other taxes. Every such cor-
5 poration, to the same extent such provisions are applicable
6 to insurers transacting similar kinds of insurance and not
7 inconsistent with the provisions of this article, shall be
8 governed by and be subject to the provisions of the fol-
9 lowing articles of this chapter: article two (insurance
10 commissioner) except that under section nine of article
11 two examinations shall be conducted at least once every
12 four years, article four (general provisions) except that
13 section sixteen of article four shall not be applicable
14 thereto, article ten (rehabilitation and liquidation), ar-
15 ticle eleven (unfair practices and frauds), and article
16 twelve (agents, brokers and solicitors) except that the
17 agent's license fee shall be one dollar; and no other pro-
18 vision of this chapter shall apply to such corporations
19 unless specifically made applicable by the provisions of
20 this article. If, however, any such corporation shall be
21 converted into a corporation organized for a pecuniary
22 profit, or if it shall transact business without having ob-
23 tained a license as required by section five of this article,
24 it shall thereupon forfeit its right to these exemptions.

2 Sec. 5. *Licenses.*—(a) No such corporation shall enter
3 into any contract with a subscriber until it has obtained
4 from the commissioner a license as provided in this sec-
5 tion. Application for a license shall be made on forms
6 to be prescribed and furnished by the commissioner.

7 (b) Such application shall be accompanied by a copy
8 of the following documents: (1) Certificate of incorpora-
9 tion; (2) By-laws; (3) Contracts between the corporation
10 and participating hospitals, physicians or other health
11 agencies; (4) Proposed contracts to be issued to sub-
12 scribers, setting forth the hospital or medical service to
13 which subscribers are entitled, and the table of rates
14 to be charged for such service; and (5) Financial state-
15 ment, showing the amount of contributions paid, or agreed
16 to be paid, to the corporation for working capital, the
17 name or names of each contributor, and the terms of each
18 contribution.

19 (c) Within thirty days after receipt of an application,
20 the commissioner shall, upon payment to him of a license
21 fee of one hundred dollars, issue a license authorizing the
22 corporation to transact business in this state in the area
23 to be served by it, if he is satisfied (1) that the applicant
24 is incorporated in this state under the provisions of
25 article one of chapter thirty-one of this code as a bona
26 fide nonprofit corporation, (2) that the contracts between
27 the corporation and participating hospitals, physicians
28 and other health agencies contain all the terms required
29 by section seven of this article, (3) that the working
30 capital available to the corporation will be sufficient to
31 pay all operating expenses, other than payment for hos-
32 pital or medical services, for a reasonable period after
33 the issuance of the license, and (4) that the proposed plan
34 will serve the best interests of all of the people of the
35 area in which the corporation intends to operate, regard-
36 less of their race, color or economic status. Any license
37 so issued may be renewed annually upon payment to the
38 commissioner of a renewal fee of one hundred dollars.

39 (d) The term of such license, renewal, refusal to license,
40 revocation, suspension, or penalty in lieu thereof, shall
be governed by the provisions of sections eight, nine, ten

41 and eleven, of article three of this chapter, in the same
42 manner that such sections are applicable to insurers gen-
43 erally.

44 (e) No such corporation shall include in its name the
45 words "insurance", "casualty", "surety", "health and acci-
46 dent", "accident and sickness", "mutual", or any other
47 words descriptive of the insurance business; nor shall
48 such name be so similar to that of any insurer which was
49 licensed to transact insurance in this state when such
50 corporation was formed, as to tend, in the opinion of the
51 commissioner, to confuse the public.

Sec. 6. *Supervision by Commissioner; Approval of Con-*
2 *tracts, Forms, Rates and Fees.*—(a) It shall be the duty
3 of the commissioner to enforce the provisions of this
4 article.

5 (b) No such corporation shall deliver or issue for de-
6 livery any subscriber's contract, changes in the terms
7 of such contract, application, rider, or endorsement, until
8 a copy thereof and the rates pertaining thereto have been
9 filed with and approved by the commissioner. All such
10 forms filed with the commissioner shall be deemed ap-
11 proved after the expiration of thirty days from the date
12 of such filing unless the commissioner shall have disap-
13 proved the same, stating his reasons for such disapproval
14 in writing, except that such period may be extended for
15 an additional period not to exceed fifteen days upon writ-
16 ten notice thereof from the commissioner to the applicant.
17 Such forms may be used prior to the expiration of such
18 periods if written approval thereof has been received from
19 the commissioner.

20 (c) No rates to be charged subscribers shall be used or
21 established by any such corporation unless and until the
22 same have been filed with the commissioner and approved
23 by him. The procedure for such filing and approval shall
24 be the same as that prescribed in paragraph (b) of this
25 section for the approval of forms. The commissioner shall
26 approve all such rates which are not excessive, inadequate
27 or unfairly discriminatory.

28 (d) The commissioner shall pass upon the actuarial

29 soundness of the schedule of fees to be paid hospitals,
30 physicians and other health agencies.

Sec. 7. *Required Provisions in Contracts Made by the*
2 *Corporations with Hospitals, Physicians and Other Health*
3 *Agencies.*—Each contract made by the corporation with
4 participating hospitals, physicians and other health
5 agencies shall contain the following provisions:

6 (a) That the hospital, physician or other health agency
7 will render to any subscriber such service as he may be
8 entitled to under the terms and conditions of the contract
9 issued to the subscriber by the corporation.

10 (b) That in submitting bills to the corporation for
11 services rendered to subscribers under the terms of their
12 contract, the hospitals, physicians and other health
13 agencies will make only such charges as are set forth in
14 an agreed schedule of fees to be paid by the corporation.

15 (c) That, in case of a deficit in available funds of the
16 corporation, each participating hospital, physician or other
17 health agency will, on the basis stated in this section,
18 accept a pro rata share of available funds in full settle-
19 ment of any bill submitted.

20 (d) That, in the event a surplus remains after an an-
21 nual accounting of the financial condition of the corpora-
22 tion, such surplus may be used by the corporation, upon
23 an affirmative vote of a majority of its board of directors,
24 for the following purposes, in the order of priority stated
25 below:

26 (1) To liquidate on a pro rata basis any losses incurred
27 by hospitals, physicians or other health agency upon the
28 settlement of bills in previous years.

29 (2) To return the original contributions for working
30 capital, or any part thereof, on a pro rata basis.

31 (3) To reduce rates charged subscribers, or to expand
32 the services rendered them.

Sec. 8. *Contract or Certificate to be Furnished to Pol-*
2 *icyholders and Subscribers; Contracts with Needy Per-*
3 *sons.*—(a) Every such corporation shall deliver to each
4 contract holder a copy of the contract and to each holder
5 of a master group contract for delivery to each sub-

6 scriber to such group contract a certificate setting forth
7 the essential terms of the contract to be performed.

8 (b) A corporation may accept from governmental
9 agencies payment of all or part of the cost of subscrip-
10 tions for hospital, medical or other health care rendered
11 needy persons, and may accept from private agencies,
12 corporations, associations, groups or individuals, similar
13 payment for such service to be rendered needy or other
14 persons.

Sec. 9. Payroll Deduction of Governmental Employees.

2 —The officer charged with the duty of preparing the pay-
3 roll of any subscriber, who is an employee of the state
4 government or of any of its political subdivisions, includ-
5 ing state operated educational institutions, may upon
6 request of the subscriber deduct from his payroll the
7 amount of the fee owed by the subscriber to any hospital
8 service corporation or medical service corporation, pro-
9 vided enrollment regulations of the particular corpora-
10 tion are satisfied, in which case the officer shall pay over
11 such amount to the corporation.

Sec. 10. Investments; Bonds of Corporate Officers and

2 *Employees.*—(a) The funds of any such corporation shall
3 be invested only as follows:

4 (1) Fifty percent of such funds shall be in cash or gov-
5 ernment securities of the type described in section seven
6 of article eight of this chapter.

7 (2) The balance of such funds may be in cash or in-
8 vested in the classes of investments described in the fol-
9 lowing sections of article eight of this chapter: section
10 eleven (corporate obligations), section twelve (building
11 and savings and loan shares, international bank), section
12 thirteen (preferred or guaranteed stock), section four-
13 teen (common stock), section sixteen (real property) and
14 section eighteen (revenue bonds). All such investments
15 shall be subject to all the restrictions and conditions con-
16 tained in said article eight as applying to similar invest-
17 ments of insurers generally.

18 (b) Every officer or employee of any such corporation,
19 who is entrusted with the handling of its funds, shall

20 furnish, in such amount as may with the approval of the
21 commissioner be fixed by the board of directors of the
22 corporation, a bond with corporate surety, conditioned
23 upon the faithful performance of all his duties.

Sec. 11. *Reciprocity with Other Service Plans Defined; Payment Authorized.*—Hospital and medical service corporations licensed and operating under provisions of this article are hereby authorized to promote and encourage reciprocity with other licensed hospital and medical plans, both within and without this state, in expanding their services to subscribers. In the event that a subscriber to a plan requires emergency hospital or medical service, or, in the event that the particular services that he receives are not available through the plan to which he subscribes, such plan is hereby authorized to make payment on behalf of such subscriber for such service on a basis not to exceed its schedule of fees to be paid hospitals or physicians, previously approved by the commissioner and on file in his office.

CHAPTER 98

(House Bill No. 245—By Mr. Richardson)

AN ACT to amend article eleven, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven, relating to the judicial council of West Virginia and providing allowance to its members for traveling expenses and the cost of food and lodging incurred by them in the performance of their official duties.

[Passed February 20, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 11. Judicial Council for study of Procedure and Practice.

Section

7. Allowance to members of council for traveling expenses.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven, to read as follows:

Section 7. *Allowance to Members of Council for Traveling Expenses.*—The members of the council shall receive no compensation for their services but they shall be entitled to an allowance of mileage at the rate of ten cents for each mile traveled and for the actual cost of food and lodging not to exceed ten dollars per day incurred by them in the performance of their official duties. Requisition for traveling expenses and the cost of food and lodging shall be accompanied by a sworn and itemized statement which shall be filed with the auditor and preserved as a public record.

CHAPTER 99

(House Bill No. 361—By Miss Hallanan and Mr. Myles)

AN ACT to amend and reenact sections one and two, article one, and section two, article two, all of chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to persons liable to serve as jurors, persons exempt and persons disqualified from serving on juries; and preparation of grand jury list, qualifications of grand jurors, preparation of ballots, and custody of such lists and ballots.

[Passed March 5, 1957; in effect from passage. Approved by the Governor.]

Article

1. **Petit Juries.**
2. **Grand Juries.**

Be it enacted by the Legislature of West Virginia:

That sections one and two, article one, and section two, article two, all of chapter fifty-two of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article 1. Petit Juries.

Section

1. Persons liable to service.
2. Exemptions and disqualifications.

Section 1. *Persons Liable to Service.*—All persons, who
2 are twenty-one years of age and not over sixty-five, and
3 who are citizens of this state, shall be liable to serve as
4 jurors, except as hereinafter provided.

Sec. 2. *Exemptions and Disqualifications.*—The judge
2 of any court may, in his discretion, exempt or excuse any
3 person from jury service when it appears that such service
4 would be improper or work an undue hardship. The fol-
5 lowing persons shall be disqualified from serving on
6 juries: Idiots, lunatics, paupers, vagabonds, habitual
7 drunkards, and persons convicted of infamous crimes.

Article 2. Grand Juries.

Section

2. Preparation of jury list; qualifications of jurors; ballots; custody of list and ballots.

Section 2. *Preparation of Jury List; Qualifications of*
2 *Jurors; Ballots; Custody of List and Ballots.*—The jury
3 commissioners appointed under the provisions of section
4 three of article one of this chapter shall select and draw
5 persons for grand juries. Such commissioners shall, at
6 the levy term of the county court each year, and at any
7 other time when required by the court which appointed
8 them, or the judge thereof in vacation, prepare a list of
9 not less than one hundred nor more than two hundred
10 qualified persons of their county for grand jury service,
11 chosen from the respective magisterial districts thereof,
12 as nearly as may be in proportion to the population of the
13 districts. The lists so prepared shall be submitted to the
14 clerk of the court authorized to impanel a grand jury, or
15 the judge thereof when required, and the name of any
16 person who is not qualified shall be stricken from the list
17 by the clerk or judge. The persons so listed shall be of
18 good moral character, who have never been convicted of
19 a felony or of any scandalous offense; and shall have been

20 bona fide citizens of the state and county for at least one
21 year immediately preceding the preparation of the list,
22 and shall not be office holders under the laws of the United
23 States or of this state. At the time such jury list is made
24 up, the jury commissioners shall cause all the names
25 thereon to be written, each on a separate ballot, and shall
26 fold, roll or prepare the same so as to resemble each other
27 as nearly as may be, and so that the name written thereon
28 shall not be visible on the outside, and shall inclose the
29 ballots for each magisterial district in a separate envelope
30 indorsed with the name of the magisterial district and the
31 number of ballots inclosed, and shall deposit all the ballots,
32 with the list, in a secure box to be prepared for the pur-
33 pose, which shall be delivered to and safely kept by the
34 clerk of the circuit court, and shall be known as the
35 "grand jury box" and shall be opened only by the jury
36 commissioners or by order of the judge of the court having
37 control thereof.

CHAPTER 100

(House Bill No. 397—By Mr. Craig and Mr. Myles)

AN ACT to amend and reenact section eleven, article one, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the method of summoning petit jurors.

[Passed March 9, 1957; in effect from passage. Approved by the Governor.]

Article 1. Petit Juries.

Section

11. Special jury commissioners; delivery of list; summoning the jurors.

Be it enacted by the Legislature of West Virginia:

That section eleven, article one, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 11. *Special Jury Commissioners; Delivery of List; Summoning the Jurors.*—If either, or both, of the jury commissioners fail to attend as required by such summons, the clerk of the circuit court shall appoint a special jury commissioner or commissioners, having the qualifications herein required, to act in his or their place and stead, for the time being, and such jurors shall be drawn by such commissioners; and it shall be the duty of the clerk of such court to place the list thereof in the hands of the sheriff or other officer authorized to summon them. And it shall be the duty of such officer, at least three days before the time when the jurors are required to attend, to summon each person who is drawn to attend the sitting of the court at the time and place mentioned in the writ, and make due return thereof, and of the summons aforesaid, to such court, at the opening thereof.

In addition to any other method provided by law, any person named in writs of venire facias, or a summons for jurors, by direction of the court, may be served by the sheriff mailing a copy thereof to such person commanding him to attend as a juror, at a time and place designated therein, which copy shall be registered or certified and deposited in the post office, addressed to such person at his usual post-office address. And the personal receipt of the person so addressed for such registered or certified copy shall be regarded as personal service of such writ or summons upon such person.

CHAPTER 101

(House Bill No. 24—By Mr. Rife)

AN ACT to amend and reenact section twenty-one, article one, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation of jurors; taxation of jury fees as costs; disposition thereof.

Article 1. Petit Juries.**Section**

21. Compensation of jurors; taxation of jury fees as costs; disposition thereof.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article one, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 21. *Compensation of Jurors; Taxation of Jury Fees as Costs; Disposition Thereof.*—Any person summoned as aforesaid, by virtue of a venire facias or otherwise, to serve as a petit juror, and actually attending upon the court, or attending at the courthouse, at the time summoned, whether he be called to serve on a jury or not, shall, for each day he so attends, be entitled to receive the sum of not less than five and not more than eight dollars, to be fixed by order entered of record, and the same mileage allowed to witnesses, to be paid out of the county treasury: *Provided*, That the per diem aforesaid shall be paid out of the state treasury for the day or days any person serves as a juror on a felony case; that for each day he shall not actually attend at the courthouse he shall receive nothing, and that he shall be allowed mileage but once during the term: *Provided further*, That when a jury in case of felony shall be placed in the custody of the sheriff, he shall provide for and furnish such jury necessary meals and lodging while they are in such sheriff's custody, at a reasonable cost to be determined by an order of the court, and such meals and lodging shall be paid for out of the state treasury, as provided for above, for jury service in felony cases. There shall be taxed in the costs against any person against whom a judgment on the verdict of a jury may be rendered in a case of misdemeanor, and against any person against whom judgment on the verdict of a jury may be rendered in a civil action, and against any person on whose motion the verdict of a jury is set aside and a new trial granted, eight dollars for jury costs, which, when collected from the party, shall be paid into the county treasury. All money so received by the clerk shall be forth-

32 with paid by him to the sheriff, and the clerk and his sure-
33 ty shall be liable therefor on his official bond as for other
34 money coming into his hands by virtue of his office.

35 The clerk of the circuit court of each county in this
36 state shall annually certify to the county court a list of all
37 money so paid to him, and by him paid to the sheriff, and,
38 in addition thereto, a correct list of all the cases in which
39 jury fees have been taxed, and are, at the time, properly
40 due and payable in the county treasury, and the sheriff of
41 the county shall be held to account in his annual settle-
42 ment for all such moneys collected by him.

CHAPTER 102

(House Bill No. 191—By Mr. Rife and Mr. Plymale)

AN ACT to amend and reenact section thirteen, article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation and mileage of grand jurors.

[Passed February 13, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 2. Grand Juries.

Section

13. Compensation and mileage of grand jurors.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 13. *Compensation and Mileage of Grand Jurors.*

2 —Every person who shall serve upon a grand jury shall be
3 entitled to receive for such services not less than five
4 dollars nor more than eight dollars, to be fixed by the
5 court, for each day he may so serve, and in addition

6 thereto the same mileage as allowed to witnesses, to be
7 paid out of the county treasury. But he shall not be paid
8 for more than four days' services at any one term of the
9 court, except in the counties of Harrison, Kanawha, Mc-
10 Dowell, Fayette, Cabell, Marshall, Marion, Mercer, Wood,
11 Ohio, Mingo, Monongalia, Preston and Summers, where
12 such grand jurors shall not be paid for more than ten
13 days' services for any one term of court. The judge of the
14 court shall fix the compensation for grand jurors, as pro-
15 vided above, by an order entered of record in such court.
16 The provisions of sections twenty-three and twenty-four
17 of article one of this chapter, relating to allowance and
18 payment of compensation and mileage to petit jurors
19 where applicable, shall apply in like respect to grand
20 jurors.

CHAPTER 103

(Senate Bill No. 340—By Mr. Moats)

AN ACT to amend and reenact section six, article three, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the custody of juries, their expenses and conversation with jurors.

[Passed March 6, 1957; in effect from passage. Approved by the Governor.]

Article 3. Trial of Criminal Cases.

Section

6. Custody of jury; expenses; no conversation with jurors.

Be it enacted by the Legislature of West Virginia:

That section six, article three, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 6. *Custody of Jury; Expenses; No Conversation with Jurors.*—After a jury in a case of felony punishable by death is impaneled and sworn, they shall be placed in the custody of the sheriff or other officer or officers designated by the court until they agree upon a verdict or are discharged by the court. In a case of felony in which the punishment cannot be death, the jury shall not be placed in the custody of the sheriff or other officer or officers unless the court, in its discretion, order it to be so placed in the custody of the sheriff or other officer or officers. While a jury is placed in the custody of the sheriff or other officer or officers as herein provided, they shall be furnished with suitable board and lodgings by the sheriff or other officer. After a jury has been impaneled no sheriff or other officer shall converse with, or permit anyone else to converse with, a juror unless by leave of the court. The court shall, in its discretion, determine the manner in which the jury shall be kept in custody by the sheriff or other officer or officers until the jury agree upon a verdict or are discharged by the court.

CHAPTER 104

(House Bill No. 441—By Mr. Frazer)

AN ACT to amend and reenact section two, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to supervision of public offices.

[Passed March 9, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 9. Supervision of Public Offices.

Section

2. How and by whom system of accounting prescribed.

Be it enacted by the Legislature of West Virginia:

That section two, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2. *How and by Whom System of Accounting Prescribed.*—The chief inspector shall formulate, prescribe and install a system of accounting and reporting in conformity with the provisions of this article, which shall be uniform for all public offices (including district offices and justices of the peace), and for all public accounts of the same class, and which shall exhibit true accounts and detailed statements for all public funds collected, received and expended for any purpose whatever by all public officers, employees or other persons. Such accounts shall show the receipt, use and disposition of all public property, and the income (if any) derived therefrom, and of all sources of public income, and the amounts due and received from each source, all receipts, vouchers and other documents kept or that may be required to be kept and necessary to identify and prove the validity of every transaction, and all statements and reports made or required to be made for the internal administration of the office to which they pertain, and all reports published or that may be required to be published for the information of the people regarding any and all details of the financial administration of public affairs. The chief inspector shall also formulate, prescribe and install a system of accounting for the civil accounts of the justices of the peace, which shall exhibit true accounts and detailed statements of the services rendered, the name and address of the persons for whom rendered, the charges made and collected therefor and such other information as may be necessary to identify the transaction. The system of accounting prescribed and formulated by the chief inspector and any changes made therein from time to time shall, before becoming operative, be approved by the board of public works.

CHAPTER 105

(House Bill No. 305—By Mr. Hammon)

AN ACT to amend article three, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to forbidding employers to charge individuals a fee for medical examination, as a condition of employment.

[Passed February 27, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 3. Safety and Welfare of Employees.

Section

17. Restriction of fees for medical examination as a condition of employment.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seventeen, to read as follows:

Section 17. *Restriction of Fees for Medical Examination as a Condition of Employment.*—(a) The term “employer”, as used in this section, shall mean and include an individual, a partnership, an association, a corporation, a legal representative, a trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within the state.

(b) The term “employee” shall mean and include every person who may be permitted, required or directed by any employer, as defined in subsection (a), in consideration of direct or indirect gain or profit, to engage in any employment.

14 (c) It shall be unlawful for any employer, as defined
15 in subsection (a) to require any employee or applicant for
16 employment to pay the cost of a medical examination
17 as a condition of employment.

18 (d) Any employer who violates the provisions of this
19 section shall be liable to a penalty of not more than one
20 hundred dollars for each and every violation. It shall be
21 the duty of the commissioner of labor to enforce this
22 section.

CHAPTER 106

(Senate Bill No. 26—By Mr. Bean, Mr. President)

AN ACT to amend and reenact section seven, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the display of flags.

[Passed February 5, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 1. Officers, Members and Employees; Appropriations; Investigations; Display of Flags; Records.

Section

7. **Flags displayed during sessions.**

Be it enacted by the Legislature of West Virginia:

That section seven, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 7. *Flags Displayed During Sessions.*—While
2 either house is in session, the flag of the United States
3 and the flag of the state of West Virginia shall be kept
4 suspended over the place of session.

CHAPTER 107

(Senate Bill No. 182—By Mr. Bean, Mr. President)

AN ACT to amend chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, and by adding to article three a new section, designated section four, and by amending and reenacting sections one, two, three, four and five, article two; section one, article four; section four, article five; sections three and five, article seven; sections one, two and three, article eight; section one, article nine; and sections two and four, article ten thereof, establishing a department of mental health, prescribing the powers and duties thereof, and providing for the transfer of records and personnel to said department from the state department of health, and the transfer of control, records and property to said department from the board of control.

[Passed March 6, 1957; in effect ninety days from passage. Approved by the Governor.]

Article

- 1-a. Department of Mental Health.
2. State Hospitals and Training School.
3. Mental Hygiene Commissions.
4. Voluntary Hospitalization.
5. Involuntary Hospitalization.
7. Release, Discharge and Readmission of Patients; Escapees.
8. Maintenance of Mentally Ill Patients.
9. Private Hospitals.
10. West Virginia Training School.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-a, and by adding to article three a new section, designated section four, and by amending and reenacting sections one, two, three, four and five, article two; section one, article four; section four, article five; sections three and five, article seven; sections one,

two and three, article eight; section one, article nine; and sections two and four, article ten thereof, all to read as follows:

Article 1-a. Department of Mental Health.

Section

1. Statement of policy.
2. Creation of department; control of certain institutions.
3. Appointment of director; term of office; qualifications.
4. Powers and duties of director.
5. Division of administration.
6. Division of professional services; liaison with other state agencies.
7. Division of community services.
8. Superintendents of mental institutions to pay money due the state to state treasury through department of mental health; appropriations; deficiency; how met.
9. Transfer of control, records and property from the board of control to the department of mental health.
10. Transfer of records from department of health to division of community services.
11. Director may establish a program for alcoholics.

Section 1. *Statement of Policy.*—The purpose of this article is to improve the administration of the mental institutions in this state, raise the standards of treatment of the mentally ill in those institutions, encourage the further development of out-patient and diagnostic clinics, establish better research and training programs, and promote the development of mental health.

Sec. 2. *Creation of Department; Control of Certain Institutions.*—There shall be a state department of mental health, to be known as the department of mental health. It shall be a corporation and, as such, shall have a seal and may contract and be contracted with. It shall consist of a director of mental health, supervisors of divisions of the department, and such other employees as are needed to carry out its functions. The department shall supervise and control Spencer state hospital, Lakin state hospital, Huntington state hospital, Barboursville state hospital, Weston state hospital, West Virginia training school, and any other state mental institution hereafter created.

Sec. 3. *Appointment of Director; Term of Office; Qualifications.*—The governor shall appoint the director of the department of mental health by and with the consent of the Senate; he shall be known as the director of mental

5 health. Before entering upon the duties of his office, the
6 director shall take and subscribe the oath of office pre-
7 scribed by section five, article four of the constitution of
8 this state, the certificate whereof shall be filed in the
9 office of the secretary of state, and he shall give bond in
10 the penalty of ten thousand dollars, conditioned as re-
11 quired by law. The director may be removed only for
12 misconduct in office or other serious cause. The director
13 shall be appointed for a term of five years and shall be
14 eligible for reappointment. The director shall be a qualified
15 psychiatrist with both clinical and administrative ex-
16 perience. Preference shall be given to candidates who are
17 diplomates of the American board of psychiatry and
18 neurology and to candidates certified by the committee
19 on the certification of mental hospital administrators. The
20 salary of the director shall be twenty thousand dollars
21 a year, and in addition thereto he shall be reimbursed
22 for all necessary travel expenses incurred in the perfor-
23 mance of his duties.

Sec. 4. *Powers and Duties of Director.*—The director
2 shall appoint the superintendents of the institutions named
3 in section two hereof, and of any other state mental in-
4 stitutions hereafter created, shall supervise and coordinate
5 their medical and fiscal administration, and may establish
6 uniform policies for those institutions. He may transfer
7 a patient from any state mental institution to any other
8 institution or clinic under his control. By agreement be-
9 tween the director of mental health and the board of con-
10 trol, a patient at a state mental institution may be trans-
11 ferred to an institution, other than correctional, under the
12 supervision of the board of control. The director of mental
13 health shall have all the authority vested in the divisions
14 of the department, as hereinafter provided, and shall
15 appoint the supervisors of those divisions. He may pre-
16 scribe rules and regulations to carry out his authority. He
17 may accept and invest any gift of personalty for the bene-
18 fit of a state mental institution or institutions or for any
19 other mental health purpose. Any income therefrom shall
20 be paid into the state treasury and expended therefrom
21 for the purpose intended by the donor. The director shall

22 make periodic reports to the governor and to the Legisla-
23 ture on the condition of the state mental institutions and
24 on other matters within his authority, and shall include
25 recommendations for improvement of the state mental
26 institutions and any other matters affecting the mental
27 health of the people of the state.

28 Whenever it shall become necessary, the director may
29 condemn any interest, right or privilege, land or improve-
30 ment which in his opinion may be necessary, in the man-
31 ner provided by law for the acquisition by this state of
32 property for public purposes. The state shall be under
33 no obligation to accept and pay for any property con-
34 demned and shall in no event pay for the same except
35 from the funds provided, and in any proceeding to con-
36 demn, such orders shall be made by the court having
37 jurisdiction of the suit, action or proceedings as may be
38 just to the state and to the owners of property to be
39 condemned, and a bond or other security may be re-
40 quired by the court securing such owners against any
41 loss or damage to be sustained by reason of the failure of
42 the state to accept and pay for the property, but such
43 bond or security shall impose no liability or debt on or of
44 the state as contemplated by the provisions of the con-
45 stitution of the state in relation to state debt.

Sec. 5. *Division of Administration.*—There shall be a
2 division of administration in the department of mental
3 health. The supervisor of this division shall assist the di-
4 rector of the department in performing his general ad-
5 ministrative duties, and shall also have the following
6 powers and duties:

7 (1) To keep the records of the department, including
8 records transferred from the board of control.

9 (2) To receive and disburse funds for the department.

10 (3) To assemble and analyze departmental budget
11 estimates, review requests for transfer of funds, and
12 maintain departmental appropriation and fiscal records.

13 (4) To make rules and regulations governing the ad-
14 ministration and business management of the institutions
15 named in section two hereof, formulate standard fiscal

16 procedures, and make recommendations for improve-
17 ment; to make regulations concerning any superintend-
18 ent's trustee fund heretofore established by authority of
19 section three-a, article one, chapter twenty-five of the
20 official code.

21 (5) To have the responsibility for the maintenance of
22 the land and buildings of said mental institutions.

23 (6) To review requisitions for supplies and equipment,
24 and cooperate with the department of purchases in de-
25 velopment and drafting of specifications.

26 (7) To handle the personnel records of the department
27 and to process payrolls.

28 (8) To enter into contracts for the department.

29 (9) To develop a civil service system, based on merit
30 and including job classification and standardization, for
31 the professional employees of the department and of the
32 institutions and for any other employees thereof who are
33 not made subject to such a system by other provisions of
34 law.

35 (10) To perform any other duties assigned to the di-
36 vision by the director of the department.

2 *Sec. 6. Division of Professional Services; Liaison with*
3 *Other State Agencies.*—There shall be a division of pro-
4 fessional services in the department of mental health.
5 The supervisor of this division shall act primarily in a con-
6 sultant capacity and shall make recommendations as to
7 professional aspects of institutional management, but
8 shall not exercise direct supervision of the institutions.
9 The supervisor shall have the following powers and duties:

10 (1) To carry on or stimulate research activities related to
11 medical and psychiatric facilities of the department, and
12 render specialized assistance to hospital superintendents.

13 (2) To develop professional standards, analyze hos-
14 pital programs, and inspect individual hospitals.

15 (3) To assist in recruiting professional staff.

16 (4) To take primary responsibility for the education
and training of professional and subprofessional personnel.

17 (5) To establish liaison with appropriate state agen-
18 cies and with private groups interested in mental health,
19 such as the state department of health, the board of con-
20 trol, the board of probation and parole, the department of
21 education, the board of governors of West Virginia uni-
22 versity, and the West Virginia association for mental
23 health, incorporated.

24 (6) To license, supervise, and inspect mental institu-
25 tions other than state mental institutions, including a sec-
26 tion of any general hospital which has facilities for the
27 involuntary confinement of mental patients.

28 (7) To perform any other duties assigned to the di-
29 vision by the director of the department.

Sec. 7. *Division of Community Services.*—There shall be
2 a division of community services in the department of
3 mental health. This division shall administer funds made
4 available to the state of West Virginia and any political
5 subdivision thereof under the national mental health act
6 (act of July 3, 1946, chapter 538). The supervisor of this
7 division shall also have the following powers and duties:

8 (1) To supervise the operation of out-patient psychiat-
9 ric clinics for adults and children and to develop new
10 clinics. Traveling clinics may be established for rural
11 areas, to be operated directly by the division or under its
12 supervision.

13 (2) To develop a comprehensive and practical program
14 of mental health education of the public, especially at the
15 local level.

16 (3) To work with county mental hygiene commissions.

17 (4) To perform any other duties assigned to the di-
18 vision by the supervisor of the department.

Sec. 8. *Superintendents of Mental Institutions to Pay
2 Money Due the State to State Treasury Through Depart-
3 ment of Mental Health; Appropriations; Deficiency, How
4 Met.*—All moneys and funds belonging to the state which
5 shall come into the possession or under the control of the
6 superintendent or other officer of a state mental institu-
7 tion or other facility under the control of the department

8 of mental health shall be paid to the director of mental
9 health monthly, on or before the tenth day of the month
10 following the month in which such moneys or funds were
11 received, under such rules and regulations as the director
12 shall prescribe. The director shall pay such moneys and
13 funds into the state treasury immediately in the manner
14 provided in article two, chapter twelve of this code.

15 All moneys appropriated for the department of mental
16 health and the state mental institutions may be expended
17 on proper requisitions issued by the director of mental
18 health or his duly authorized agent. Whenever the ap-
19 propriations by the Legislature for the mental institu-
20 tions are insufficient to pay the expenses of conducting
21 such institutions, the director of mental health shall
22 certify the deficiency to the governor. The certificate
23 shall state the name of the institution and the items and
24 amount in detail needed, and the governor may direct
25 payment of the same or any part thereof out of any ap-
26 propriation available for that purpose.

*Sec. 9. Transfer of Control, Records and Property from
2 the Board of Control to the Department of Mental Health.*

3 —The control of the financial, business and all other af-
4 fairs of such state mental institutions is hereby transfer-
5 red from the state board of control to the department of
6 mental health, and, as its chief executive officer, the di-
7 rector shall, in respect to the control, management and
8 property of such institutions, have the same rights and
9 powers and shall perform the same duties and functions
10 as were heretofore exercised or performed by the state
11 board of control. The title to all property of such state
12 mental institutions is hereby transferred to and vested
13 in the department of mental health.

*Sec. 10. Transfer of Records from Department of Health
2 to Division of Community Services.*—The state depart-

3 ment of health shall transfer to the division of community
4 services of the department of mental health all of the
5 records of the bureau of mental health and all records
6 pertaining to the state mental institutions. Persons em-
7 ployed by the state department of health in that bureau

8 may also be transferred to this division. All persons now
9 employed by the various guidance clinics in the state shall
10 be under the supervision of this division.

Sec. 11. *Director May Establish a Program for Alcoholics.*—The director of mental health may establish a
2 special program for the care and treatment of alcoholics,
3 to the extent to which the appropriation for the depart-
4 ment makes such a program possible. The program may
5 include establishment of clinics for diagnosis, treatment,
6 care, and guidance of alcoholics, including one or more
7 pilot out-patient clinics in populous areas of the state. The
8 director may arrange and provide for temporary hos-
9 pitalization of alcoholics who, upon the department's
10 diagnosis and pursuant to its rules and regulations, are
11 in need of such hospitalization. The department may in-
12 form and educate the public as well as interested groups
13 and persons concerning alcoholism and its prevention and
14 treatment and may participate in national, state and local
15 meetings and programs concerned with alcoholism. The
16 department may conduct or participate in research on the
17 causes, prevention and treatment of alcoholism and on
18 the effectiveness of the program of the department. The
19 director may enter into lease, rental, or similar agree-
20 ments for suitable clinic or hospital facilities; utilize,
21 through contracts or otherwise, the available services and
22 assistance of any person, groups, organizations or institu-
23 tions in the development and promotion of the depart-
24 ment's program; and enter into contracts for research and
25 educational services relating to alcoholism. The director
26 may receive funds from any governmental source and
27 private gifts for the development and operation of the
28 program.
29

Article 2. State Hospitals and Training School.

Section

1. Locations; continuation; management.
2. Superintendents.
3. Rules as to patients.
4. Forms for committing patients; other records.
5. Reports by superintendents; registration by department of mental health.

Section 1. *Locations; Continuation; Management.*—The
2 state hospitals for the mentally ill heretofore established
3 at Weston, Spencer, Huntington, Barboursville, Lakin
4 and St. Marys shall be continued and known respectively
5 as the Weston state hospital, Spencer state hospital, Hun-
6 tington state hospital, Barboursville state hospital, Lakin
7 state hospital and the West Virginia training school. Said
8 hospitals shall be managed, directed and controlled by
9 the department of mental health as provided in article
10 one-a of this chapter.

Sec. 2. *Superintendents.*—The superintendent of an in-
2 stitution named in section one, or institution hereafter cre-
3 ated, shall be appointed for an indefinite period. The super-
4 intendent of a mental hospital shall be a qualified psychiat-
5 rist with some experience in a mental hospital. Preference
6 shall be given to diplomates of the American board of psy-
7 chiatry and neurology and to persons who are certified by
8 the committee on the certification of mental hospital ad-
9 ministrators. The superintendent of the West Virginia
10 training school shall be a person qualified to supervise an
11 institution for mentally retarded and emotionally disturb-
12 ed children and adults.

13 The superintendent, subject to merit system regula-
14 tions, shall have the power to appoint all assistants and
15 employees required for the management of his institution;
16 but the number of such assistants and employees, and their
17 compensation, shall first be fixed by the director of mental
18 health.

19 The superintendent shall be furnished living quarters,
20 household furniture, board, fuel and lights for himself
21 and his family. The director of mental health may desig-
22 nate other officers to receive these emoluments, as de-
23 termined by the character of their duties.

Sec. 3. *Rules as to Patients.*—The director of mental
2 health shall have authority to make rules, not contrary to
3 law, regulating the admission of patients to the said in-
4 stitutions, the care, maintenance and treatment of patients
5 therein, and the release, trial visit and discharge of pa-
6 tients therefrom.

Sec. 4. *Forms for Committing Patients; Other Records.*

2 —The director of mental health shall have authority to
3 prepare, prescribe and have printed forms to be used for
4 commitment to and discharge from the said institutions.

Sec. 5. *Reports by Superintendents; Registration by*

2 *Department of Mental Health.*—The superintendent of
3 each state mental institution shall furnish to the director
4 of mental health such information as he may require con-
5 cerning admissions, discharges, deaths and other matters.
6 From this and other information available to the director
7 of mental health, he shall keep such records as are neces-
8 sary to enable him to have current information concern-
9 ing the extent of mental illness in the state. The names of
10 individuals shall not be accessible to anyone except by
11 permission of the director of mental health, or by order of
12 the judge of a court of record.

Article 3. Mental Hygiene Commissions

Section

4. Director of mental health may make rules.

Section 4. *Director of Mental Health May Make Rules.*—

2 The director of mental health shall have authority to
3 make rules, not contrary to law, regulating the procedure
4 of mental hygiene commissions. The director may publish
5 and distribute a handbook for the members of such com-
6 missions.

Article 4. Voluntary Hospitalization.

Section

1. Admissions.

Section 1. *Admissions.*—Any person, a resident of this
2 state, who desires the benefit of institutional treatment,
3 may be admitted to one of the state mental hospitals on
4 his own application. Such admissions shall be subject to
5 the rules of the department of mental health.

Article 5. Involuntary Hospitalization.

Section

4. Disposition of mentally ill persons.

Section 4. *Disposition of Mentally Ill Persons.*—If
2 upon completion of the hearing and consideration of the

3 record, the commission finds that the proposed patient (1)
4 is mentally ill, and (2) because of his illness is likely to
5 injure himself or others if allowed to remain at liberty, or
6 (3) is in need of custody, care or treatment in a mental
7 hospital and because of his illness lacks sufficient insight
8 or capacity to make responsible decisions with respect to
9 his hospitalization, and (4) is a resident of the county in
10 which the hearing is held, it shall order his hospitalization
11 for an indeterminate period or for a temporary observa-
12 tion period not exceeding six months; otherwise, it shall
13 dismiss the proceeding. An order for an indeterminate
14 period relieves the patient of legal capacity. If the order
15 is for a temporary period, the commission may at any
16 time prior to the expiration of such period, on the basis of
17 a report by the head of the hospital and such further in-
18 quiry as it may deem appropriate, order indeterminate
19 hospitalization of the patient or dismissal of the proceed-
20 ing. If the commission orders hospitalization of the patient,
21 it will notify the county health officer, who may make a
22 study of the patient's family and environment and report
23 his findings to the superintendent of the hospital receiving
24 the patient.

25 In lieu of ordering the patient to a mental hospital, the
26 commission may order him delivered to some relative or
27 friend who will agree to take care of him, and take from
28 such relative or friend a bond in the penalty of at least
29 five hundred dollars, with sufficient security to be approv-
30 ed by the commission, payable to the state of West Vir-
31 ginia, with condition to restrain and take proper care of
32 such person until the further order of the commission.
33 But if the person found to be a mentally ill person is not
34 dangerous to himself or to others, or is found harmless,
35 he may be delivered to any relative or friend who will
36 agree to take proper care of him without such bond if,
37 in the judgment of the commission, the same may be
38 proper.

39 If the person found to be mentally ill by the commission
40 is a resident of another county of this state, a transcript
41 of the evidence adduced at the hearing of such person,

42 properly certified by the clerk of the county court, shall
43 forthwith be forwarded to the clerk of the county court
44 of the county of which such person is a resident, who shall
45 immediately present such transcript to the mental hy-
46 giene commission of said county. Such commission shall
47 give full faith and credit to the evidence contained in
48 such transcript, and, if satisfied that such person is men-
49 tally ill, shall order the person to be committed to one
50 of the state hospitals for the mentally ill, as though the
51 person had been brought before it in the first instance.
52 This order shall be transmitted forthwith to the county
53 clerk of the county in which the hearing was held, who
54 shall execute said order promptly. All expenses incurred
55 in this proceeding, as well as for the hospitalization of
56 the mentally ill person, shall be borne by the county of
57 which he is a resident.

58 If the person found to be mentally ill by the commis-
59 sion is a resident of another state, this information shall
60 be forthwith given to the director of mental health, who
61 shall make appropriate arrangements for his transfer to
62 his native state, except as qualified by the interstate com-
63 pact on mental health.

Article 7. Release, Discharge and Readmission of Patients; Escapes.

Section

3. Release as unimproved.
5. Return of escapees; veterans.

Section 3. *Released as Unimproved.*—The superintend-
2 ent of an institution may release a patient as unimproved
3 when the patient's family or friends, or committee or
4 guardian, or other responsible persons, request his re-
5 lease and are willing and able to take proper care of said
6 patient outside the hospital, taking from such relative,
7 friend, committee, guardian or responsible person a bond
8 in the penalty of at least five hundred dollars, with suf-
9 ficient security to be approved by the superintendent, pay-
10 able to the state of West Virginia, conditioned to restrain
11 and take proper care of such patient until the further order
12 of the superintendent. Reports shall be made by those in
13 charge of said patient at least once every six months to

14 the superintendent of the hospital. No discharge shall be
15 given to said patient until he has returned to the hospital
16 for examination by the superintendent and staff thereof
17 and it has been determined that he is no longer mentally
18 ill.

19 Where such discharges or releases are granted as in-
20 dicated in sections one, two and three above, the superin-
21 tendent of the hospital shall report the same to the direc-
22 tor of mental health and to the county clerk of the county
23 of which the patient is a resident.

Sec. 5. *Return of Escapees; Veterans.*—If any person
2 confined in a state hospital escapes therefrom, the super-
3 intendent thereof shall issue a notice, giving the name and
4 description of the person escaping, and requesting his ap-
5 prehension and return to the hospital, and may offer such
6 reward for the return of such person as the director of
7 mental health may authorize. The superintendent may
8 issue a warrant directed to the sheriff of the county, com-
9 manding him to arrest and carry such escaped person back
10 to the hospital, which warrant the sheriff may execute in
11 any part of the state. If such person flee to another state,
12 the superintendent shall notify the director of mental
13 health, and he shall take such action as he may deem
14 proper for the return of such person to the hospital.

15 If any veteran duly committed to a veterans' hospital or
16 other veterans' institution, either within or without the
17 state, escape or elope therefrom and any person make
18 complaint, under oath, to the clerk of the county court
19 of the county from which such veteran was so committed,
20 giving such information and stating such facts therein as
21 may be required, or if any veteran duly committed to a
22 veterans' hospital or other veterans' institution, either
23 within or without the state, escape or elope therefrom
24 and the superintendent or chief officer of such hospital
25 or institution issue notice to the clerk of the county court
26 of the county from which such veteran was so committed,
27 giving the name and description of such veteran and re-
28 questing his apprehension and return to such hospital or
29 institution, the clerk, upon receipt of such complaint or

30 of such notice, may issue a warrant directed to the sheriff
31 of the county commanding him to arrest and carry such
32 veteran back to such hospital or institution, which war-
33 rant the sheriff may execute in any part of the state.

34 The sheriff or other person making any arrest under
35 this section shall be paid such compensation as is provided
36 for like services in other cases, and such additional com-
37 pensation in any case as the director of mental health may
38 think reasonable and just.

39 The foregoing provisions shall likewise apply to any
40 veteran released from a veterans' hospital or other veter-
41 ans' institution, either within or without the state, on trial
42 visit or on parole whose conduct becomes such as to war-
43 rant his return to such hospital or institution.

Article 8. Maintenance of Mentally Ill Patients.

Section

1. Maintenance of patients; reimbursement.
2. When and how counties to pay.
3. Care of patients in boarding homes.

Section 1. Maintenance of Patients; Reimbursement.—

2 The cost of the maintenance of patients admitted to the
3 state mental institutions shall be paid out of funds ap-
4 propriated for the respective institutions, but the insti-
5 tutions, through the director of mental health, shall have
6 a right of reimbursement for all or any part of such main-
7 tenance, in no case to exceed five dollars per day, from
8 each patient or from the committee or guardian of the
9 estate of the patient, or if that be insufficient, then from
10 the patient's husband, wife, children, father and mother,
11 or any of them. If a relative so liable does not reside in
12 this state and has no estate or debts due him within the
13 state by means of which the liability can be enforced
14 against him, the other relatives shall be liable as provided
15 by this section. In exercising this right of reimbursement,
16 the director of mental health may, whenever it is deemed
17 just and expedient to do so, exonerate any person charge-
18 able with such maintenance from the payment thereof in
19 whole or in part, if the director finds that such person is un-
20 able to pay or that payment would work an undue hardship
21 on him or on those dependent upon him.

22 There shall be no discrimination on the part of the in-
23 stitution as to food, care, protection, treatment or rehabili-
24 tation, between patients who pay for their maintenance
25 and those who are unable to do so.

26 The provisions of this section apply only to the state
27 mental hospitals proper, and not to the clinics attached
28 thereto.

29 It shall be the responsibility of the director of mental
30 health to determine the ability of the patient or of his
31 relatives to pay for his maintenance.

Sec. 2. *When and How Counties to Pay.*—If the state
2 mental institution is unable to collect a minimum of one
3 hundred dollars per annum toward the maintenance of a
4 patient, whether on a voluntary or involuntary status,
5 the county of which the patient is a resident shall an-
6 nually pay into the state treasury for credit to the appro-
7 priate institution the difference between the amount, if
8 any, collected by the institution and the sum of one hun-
9 dred dollars.

10 At every levy term of each county court it shall esti-
11 mate for and levy a sufficient amount to meet all such ex-
12 penses. The superintendent of such institution, on or
13 before the tenth day of January of each year, shall certify
14 to the auditor a list of all the patients in the institution
15 during the whole or any part of the preceding year for
16 which the counties are to pay, showing on such list under
17 the name of the county, the number from each county
18 and length of time they were in the institution during the
19 year, and showing the amount due from each county for
20 each patient, and the total amount due from each county
21 for the year. As soon as such list is received by the audi-
22 tor he shall charge to each county the amount appearing
23 to be due from the certificates of the superintendents.
24 Within ten days after the receipt of such certificates the
25 auditor shall make out a copy thereof for each county
26 and certify the same to the county court thereof, which
27 list shall show the name of each patient in such hospital
28 from the county during the year, the length of time he
29 was in such institution during the year, the amount charged

30 for each patient, and the total amount charged on account
31 of all such patients from the county; and such total
32 amount shall constitute a debt against the county due the
33 state. Whenever there is in the state treasury a sum of
34 money due any county from any source, the same shall be
35 at once applied on the debt aforesaid against the county,
36 and the fact of such application of such fund shall be re-
37 ported by the auditor to the county court of the county,
38 which report shall be a receipt for the amount therein
39 named.

Sec. 3. *Care of Patients in Boarding Homes.*—The di-
2 rector of mental health may, upon the recommendation
3 of the superintendent of the institution, provide care in
4 a suitable boarding home for any patient in a state mental
5 institution, if the condition of the patient is such that his
6 and the public welfare will not be prejudiced thereby.
7 A patient in a boarding home shall be deemed to be a
8 patient of the institution from which he was removed
9 and shall, on the approval of the superintendent, be
10 placed under the supervision of a psychiatric social
11 worker employed by the institution. All patients in such
12 homes shall be visited at least once every three months,
13 and if upon the visitation they are found to be abused,
14 neglected or improperly cared for, they shall be returned
15 to the institution or placed in a better boarding home.
16 The cost of the boarding home care shall be paid by the
17 institution from which he was removed.

Article 9. Private Hospitals.

Section

1. Permit from director of mental health; regulations.

Section 1. *Permit from Director of Mental Health;*
2 *Regulations.*—No private hospital for the care and treat-
3 ment of mentally ill persons for compensation shall be
4 established unless a permit therefor shall be first obtained
5 from the director of mental health. The term “private
6 hospital” includes any hospital or clinic other than a state
7 mental institution, whether operated solely as a mental
8 hospital or clinic or as a section of any general hospital
9 which has facilities for the involuntary confinement of
10 mental patients. The application for such permit shall be

11 accompanied by a plan of the premises to be occupied, and
12 such other data and facts as the director may require.
13 He may make such terms and regulations in regard to the
14 conduct of such hospital as he may think proper and
15 necessary. He, or any person authorized by him, shall
16 have full authority to investigate and inspect such private
17 hospital; and the director of mental health may revoke
18 the permit of any such hospital for good cause after
19 reasonable notice to the superintendent or other person
20 in charge thereof.

Article 10. West Virginia Training School.

Section

2. Proceedings for commitment.
4. Discharge or parole of inmates.

Section 2. *Proceedings for Commitment.*—Mental de-
2 fectives shall be admitted to said school in the following
3 manner:

4 (a) The county mental hygiene commission shall have
5 jurisdiction of all applications for commitment of persons
6 to said school. Any relative of a person affected may
7 make application, by complaint under oath, to have the
8 person adjudged a mental defective; but when the rela-
9 tives of a mentally defective person either neglect or re-
10 fuse to place such person in said school, or in some private
11 institution of like nature, and shall permit him or her to
12 go at large, then any reputable citizen of the county may,
13 by complaint under oath, make application to the mental
14 hygiene commission for such commitment; and such com-
15 plaint shall not be subject to exception for defects of
16 form. When application is filed for commitment of an
17 alleged mentally defective person, the commission shall
18 appoint two physicians to examine such person and de-
19 termine whether or not he is mentally defective. Both
20 these physicians shall be selected as being the most
21 capable physicians available because of knowledge of and
22 training in psychiatry, and neither of them shall be
23 related in any wise to the person sought to be com-
24 mitted.

25 (b) Where any court of the state has on trial before
26 it a prisoner for an offense, and the judge shall have cause

27 to believe that the prisoner is mentally defective, he may
28 appoint two physicians as aforesaid to examine the pris-
29 oner, to ascertain whether or not he is in reality mentally
30 defective; and if such physician shall pronounce the pris-
31 oner to be mentally defective, the judge may commit him
32 to said school.

33 In either of the cases named above, the physicians mak-
34 ing the examination shall be required to make a complete
35 and thorough examination, both mental and physical, and
36 shall be required to make to the commission or court
37 appointing them a certificate as to their findings in the
38 matter. This certificate shall be in the form prescribed
39 by the director of mental health, and shall be made in
40 duplicate, one copy of the same being sent with the
41 patient when committed to the school, and the other copy
42 being filed with the commission or court committing such
43 person; and it shall be the duty of the superintendent of
44 said school to refuse admission of any person unless he
45 or she shall present a copy of such certificate.

46 The commission or court, by order, shall designate some
47 reputable person to convey such mentally defective per-
48 son to the school and to protect such person until such
49 time as he or she can be conveyed to the institution.
50 When any female is taken to the school, a female at-
51 tendant shall be provided.

52 All expenses connected with the commitment of a per-
53 son hereunder and conveying of such mentally defective
54 person to the school shall be borne by the county of
55 which such person is a resident.

Sec. 4. *Discharge or Parole of Inmates.*—When, in the
2 judgment of the superintendent of the school, a patient
3 or inmate thereof shall, under the treatment and training
4 given therein, improve mentally and physically to such
5 an extent as to no longer constitute a menace to himself
6 or herself or others, the superintendent shall have the
7 right, and it shall be his duty, to discharge or parole such
8 person, under such rules and regulations as the director
9 of mental health may prescribe.

CHAPTER 108

(Senate Bill No. 175—By Mr. Moats and Mr. Jackson, of Lincoln)

AN ACT to amend chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen, relating to the entry of the state of West Virginia into an interstate compact on mental health.

[Passed March 9, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 14. Interstate Compact on Mental Health.

Section

1. Governor to execute compact.
2. Mental health administration.
3. Supplementary agreements.
4. Financial arrangements.
5. Transmittal of copies of article.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fourteen, to read as follows:

Section 1. *Governor to Execute Compact.*—The governor of this state is hereby authorized and directed to execute a compact on behalf of the state of West Virginia with any state or states of the United States legally joining therein in form substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH
The contracting states solemnly agree that:

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further,

13 the party states find that the necessity of and desirability
14 for furnishing such care and treatment bears no primary
15 relation to the residence or citizenship of the patient but
16 that, on the contrary, the controlling factors of com-
17 munity safety and humanitarianism require that facili-
18 ties and services be made available for all who are in
19 need of them. Consequently, it is the purpose of this
20 compact and of the party states to provide the necessary
21 legal basis for the institutionalization or other appro-
22 priate care and treatment of the mentally ill and mentally
23 deficient under a system that recognizes the paramount
24 importance of patient welfare and to establish the re-
25 sponsibilities of the party states in terms of such wel-
26 fare.

27

Article II

28 As used in this compact:

29 (a) "Sending state" shall mean a party state from
30 which a patient is transported pursuant to the provisions
31 of the compact or from which it is contemplated that a
32 patient may be so sent.

33 (b) "Receiving state" shall mean a party state to
34 which a patient is transported pursuant to the provisions
35 of the compact or to which it is contemplated that a
36 patient may be so sent.

37 (c) "Institution" shall mean any hospital or other
38 facility maintained by a party state or political sub-
39 division thereof for the care and treatment of mental
40 illness or mental deficiency.

41 (d) "Patient" shall mean any person subject to or
42 eligible as determined by the laws of the sending state,
43 for institutionalization or other care, treatment, or super-
44 vision pursuant to the provisions of this compact.

45 (e) "After-care" shall mean care, treatment and ser-
46 vices provided a patient, as defined herein, on conva-
47 lescent status or conditional release.

48 (f) "Mental illness" shall mean mental disease to such
49 extent that a person so afflicted requires care and treat-
50 ment for his own welfare, or the welfare of others, or
51 of the community.

52 (g) "Mental deficiency" shall mean mental deficiency
53 as defined by appropriate clinical authority to such ex-
54 tent that a person so afflicted is incapable of managing
55 himself and his affairs, but shall not include mental ill-
56 ness as defined herein.

57 (h) "State" shall mean any state, territory or pos-
58 session of the United States, the District of Columbia,
59 and the Commonwealth of Puerto Rico.

60

Article III

61 (a) Whenever a person physically present in any
62 party state shall be in need of institutionalization by
63 reason of mental illness or mental deficiency, he shall
64 be eligible for care and treatment in an institution in
65 that state irrespective of his residence, settlement or
66 citizenship qualifications.

67 (b) The provisions of paragraph (a) of this article
68 to the contrary notwithstanding, any patient may be
69 transferred to an institution in another state whenever
70 there are factors based upon clinical determinations in-
71 dicating that the care and treatment of said patient
72 would be facilitated or improved thereby. Any such in-
73 stitutionalization may be for the entire period of care
74 and treatment or for any portion or portions thereof.
75 The factors referred to in this paragraph shall include
76 the patient's full record with due regard for the loca-
77 tion of the patient's family, character of the illness and
78 probable duration thereof, and such other factors as shall
79 be considered appropriate.

80 (c) No state shall be obliged to receive any patient
81 pursuant to the provisions of paragraph (b) of this arti-
82 cle unless the sending state has given advance notice
83 of its intention to send the patient; furnished all avail-
84 able medical and other pertinent records concerning the
85 patient; given the qualified medical or other appropriate
86 clinical authorities of the receiving state an opportunity
87 to examine the patient if said authorities so wish; and
88 unless the receiving state shall agree to accept the
89 patient.

90 (d) In the event that the laws of the receiving state

91 establish a system of priorities for the admission of
92 patients, an interstate patient under this compact shall
93 receive the same priority as a local patient and shall be
94 taken in the same order and at the same time that he
95 would be taken if he were a local patient.

96 (e) Pursuant to this compact, the determination as
97 to the suitable place of institutionalization for a patient
98 may be reviewed at any time and such further transfer
99 of the patient may be made as seems likely to be in the
100 best interest of the patient.

101

Article IV

102 (a) Whenever, pursuant to the laws of the state in
103 which a patient is physically present, it shall be de-
104 termined that the patient should receive after-care or
105 supervision, such care or supervision may be provided
106 in a receiving state. If the medical or other appropriate
107 clinical authorities having responsibility for the care
108 and treatment of the patient in the sending state shall
109 have reason to believe that after-care in another state
110 would be in the best interest of the patient and would
111 not jeopardize the public safety, they shall request the
112 appropriate authorities in the receiving state to investi-
113 gate the desirability of affording the patient such after-
114 care in said receiving state, and such investigation shall
115 be made with all reasonable speed. The request for in-
116 vestigation shall be accompanied by complete informa-
117 tion concerning the patient's intended place of residence
118 and the identity of the person in whose charge it is pro-
119 posed to place the patient, the complete medical history
120 of the patient, and such other documents as may be
121 pertinent.

122 (b) If the medical or other appropriate clinical
123 authorities having responsibility for the care and treat-
124 ment of the patient in the sending state and the ap-
125 propriate authorities in the receiving state find that the
126 best interest of the patient would be served thereby, and
127 if the public safety would not be jeopardized thereby,
128 the patient may receive after-care or supervision in the
129 receiving state.

130 (c) In supervising, treating, or caring for a patient

131 on after-care pursuant to the terms of this article, a re-
132 ceiving state shall employ the same standards of visita-
133 tion, examination, care, and treatment that it employs
134 for similar local patients.

135 **Article V**

136 Whenever a dangerous or potentially dangerous pa-
137 tient escapes from an institution in any party state, that
138 state shall promptly notify all appropriate authorities
139 within and without the jurisdiction of the escape in a
140 manner reasonably calculated to facilitate the speedy
141 apprehension of the escapee. Immediately upon the ap-
142 prehension and identification of any such dangerous or
143 potentially dangerous patient, he shall be detained in
144 the state where found pending disposition in accordance
145 with law.

146 **Article VI**

147 The duly accredited officers of any state party to this
148 compact, upon the establishment of their authority and
149 the identity of the patient, shall be permitted to trans-
150 port any patient being moved pursuant to this compact
151 through any and all states party to this compact, without
152 interference.

153 **Article VII**

154 (a) No person shall be deemed a patient of more
155 than one institution at any given time. Completion of
156 transfer of any patient to an institution in a receiving
157 state shall have the effect of making the person a patient
158 of the institution in the receiving state.

159 (b) The sending state shall pay all costs of and inci-
160 dental to the transportation of any patient pursuant to
161 this compact, but any two or more party states may, by
162 making a specific agreement for that purpose, arrange
163 for a different allocation of costs as among themselves.

164 (c) No provision of this compact shall be construed
165 to alter or affect any internal relationships among the
166 departments, agencies and officers of and in the govern-
167 ment of a party state, or between a party state and its
168 subdivisions, as to the payment of costs, or responsibili-
169 ties therefor.

170 (d) Nothing in this compact shall be construed to pre-
171 vent any party state or subdivision thereof from assert-
172 ing any right against any person, agency or other entity
173 in regard to costs for which such party state or subdi-
174 vision thereof may be responsible pursuant to any pro-
175 vision of this compact.

176 (e) Nothing in this compact shall be construed to
177 invalidate any reciprocal agreement between a party
178 state and a non-party state relating to institutionaliza-
179 tion, care or treatment of the mentally ill or mentally
180 deficient, or any statutory authority pursuant to which
181 such agreements may be made.

182

Article VIII

183 (a) Nothing in this compact shall be construed to
184 abridge, diminish, or in any way impair the rights, duties,
185 and responsibilities of any patient's guardian on his own
186 behalf or in respect of any patient for whom he may
187 serve, except that where the transfer of any patient to
188 another jurisdiction makes advisable the appointment of
189 a supplemental or substitute guardian, any court of com-
190 petent jurisdiction in the receiving state may make such
191 supplemental or substitute appointment and the court
192 which appointed the previous guardian shall upon being
193 duly advised of the new appointment, and upon the
194 satisfactory completion of such accounting and other
195 acts as such court may by law require, relieve the pre-
196 vious guardian of power and responsibility to whatever
197 extent shall be appropriate in the circumstances: *Pro-*
198 *vided, however,* That in the case of any patient having
199 settlement in the sending state, the court of competent
200 jurisdiction in the sending state shall have the sole dis-
201 cretion to relieve a guardian appointed by it or con-
202 tinue his power and responsibility, whichever it shall
203 deem advisable. The court in the receiving state may, in
204 its discretion, confirm or reappoint the person or persons
205 previously serving as guardian in the sending state in
206 lieu of making a supplemental or substitute appoint-
207 ment.

208 (b) The term "guardian" as used in paragraph (a)
209 of this article shall include any guardian, trustee, legal

210 committee, conservator, or other person or agency how-
211 ever denominated who is charged by law with power to
212 act for or responsibility for the person or property of
213 a patient.

214

Article IX

215 (a) No provision of this compact except article V
216 shall apply to any person institutionalized while under
217 sentence in a penal or correctional institution or while
218 subject to trial on a criminal charge, or whose institu-
219 tionalization is due to the commission of an offense for
220 which, in the absence of mental illness or mental defi-
221 ciency, said person would be subject to incarceration in
222 a penal or correctional institution.

223 (b) To every extent possible, it shall be the policy of
224 states party to this compact that no patient shall be
225 placed or detained in any prison, jail or lockup, but such
226 patient shall, with all expedition, be taken to a suitable
227 institutional facility for mental illness or mental de-
228 ficiency.

229

Article X

230 (a) Each party state shall appoint a "compact ad-
231 ministrator" who, on behalf of his state, shall act as
232 general coordinator of activities under the compact in
233 his state and who shall receive copies of all reports, cor-
234 respondence, and other documents relating to any pa-
235 tient processed under the compact by his state either
236 in the capacity of sending or receiving state. The com-
237 pact administrator or his duly designated representative
238 shall be the official with whom other party states shall
239 deal in any matter relating to the compact or any pa-
240 tient processed thereunder.

241 (b) The compact administrators of the respective party
242 states shall have power to promulgate reasonable rules
243 and regulations to carry out more effectively the terms
244 and provisions of this compact.

245

Article XI

246 The duly constituted administrative authorities of any
247 two or more party states may enter into supplementary
248 agreements for the provision of any service or facility

249 or for the maintenance of any institution on a joint or
250 cooperative basis whenever the states concerned shall
251 find that such agreements will improve services, facili-
252 ties, or institutional care and treatment in the fields of
253 mental illness or mental deficiency. No such supple-
254 mentary agreement shall be construed so as to relieve
255 any party state of any obligation which it otherwise
256 would have under other provisions of this compact.

257

Article XII

258 This compact shall enter into full force and effect as
259 to any state when enacted by it into law, and such state
260 shall thereafter be a party thereto with any and all
261 states legally joining therein.

262

Article XIII

263 (a) A state party to this compact may withdraw
264 therefrom by enacting a statute repealing the same. Such
265 withdrawal shall take effect one year after notice thereof
266 has been communicated officially and in writing to the
267 governors and compact administrators of all other party
268 states. However, the withdrawal of any state shall not
269 change the status of any patient who has been sent to
270 said state or sent out of said state pursuant to the pro-
271 visions of the compact.

272 (b) Withdrawal from any agreement permitted by
273 article VII (b) as to costs or from any supplementary
274 agreement made pursuant to article XI shall be in accord-
275 ance with the terms of such agreement.

276

Article XIV

277 This compact shall be liberally construed so as to
278 effectuate the purposes thereof. The provisions of this
279 compact shall be severable and if any phrase, clause,
280 sentence or provision of this compact is declared to be
281 contrary to the constitution of any party state or of the
282 United States or the applicability thereof to any gov-
283 ernment, agency, person or circumstance is held invalid,
284 the validity of the remainder of this compact and the
285 applicability thereof to any government, agency, person
286 or circumstance shall not be affected thereby. If this
287 compact shall be held contrary to the constitution of

288 any state party thereto, the compact shall remain in full
289 force and effect as to the remaining states and in full
290 force and effect as to the state affected as to all severable
291 matters.

Sec. 2. *Mental Health Administration.*—The director of
2 mental health shall be the compact administrator and,
3 acting jointly with like officers of other party states, shall
4 have power to promulgate rules and regulations to carry
5 out more effectively the terms of the compact. The com-
6 pact administrator is hereby authorized, empowered and
7 directed to cooperate with all departments, agencies and
8 officers of and in the government of this state and its sub-
9 divisions in facilitating the proper administration of the
10 compact or of any supplementary agreement or agree-
11 ments entered into by this state thereunder.

Sec. 3. *Supplementary Agreements.*—The compact ad-
2 ministrator is hereby authorized and empowered to enter
3 into supplementary agreements with appropriate officials
4 of other states pursuant to articles VII and XI of the
5 compact. In the event that any such supplementary
6 agreements shall require or contemplate the use of any
7 institution or facility of this state or require or contem-
8 plate the provision of any service by this state, no such
9 agreement shall have force or effect until approved by
10 the head of the department or agency under whose
11 jurisdiction said institution or facility is operated or
12 whose department or agency will be charged with the
13 rendering of such service.

Sec. 4. *Financial Arrangements.*—The compact ad-
2 ministrator, subject to the approval of the state auditor,
3 may make or arrange for any payments necessary to dis-
4 charge any financial obligations imposed upon this state
5 by the compact or by any supplementary agreement
6 entered into thereunder.

Sec. 5. *Transmittal of Copies of Article.*—Duly authen-
2 ticated copies of this article shall, upon its approval, be
3 transmitted by the secretary of state to the governor of
4 each state, the attorney general and the secretary of state
5 of the United States, and the council of state govern-
6 ments.

CHAPTER 109

(House Bill No. 154—By Mr. White, of Monroe)

AN ACT to amend and reenact sections eighteen and nineteen, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definition of phrase "implement of husbandry" and phrase "special mobile equipment".

[Passed March 9, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 1. Words and Phrases Defined.

Section

18. Implement of husbandry.
19. Special mobile equipment.

Be it enacted by the Legislature of West Virginia:

That sections eighteen and nineteen, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 18. *Implement of Husbandry.*—Every vehicle
2 which is designed for agricultural purposes and used by
3 the owner thereof primarily in the conduct of his agri-
4 cultural operations.

Sec. 19. *Special Mobile Equipment.*—Every vehicle not
2 designed or used for the transportation of persons or prop-
3 erty and incidentally operated or moved over the high-
4 ways, including road construction or maintenance ma-
5 chinery, ditch-digging apparatus, well-boring apparatus,
6 concrete mixers, and farm tractors, when farm tractors
7 cannot be classified as an implement of husbandry as
8 defined in section eighteen, article one of this chapter.
9 The foregoing enumeration shall be deemed partial and
10 shall not operate to exclude other such vehicles which
11 are within the general terms of this section.

CHAPTER 110

(Senate Bill No. 212—By Mr. Bean, Mr. President, and Mr. Carrigan)

AN ACT to amend article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, to be designated section three-a, relating to the payment of certain personal property taxes as a condition precedent to registration of vehicles with the department of motor vehicles.

[Passed March 4, 1957; in effect from passage. Approved by the Governor.]

Article 3. Original and Renewal of Registration, Issuance of Certificates of Title.

Section

3-a. Application for registration or renewal of registration; payment of personal property taxes.

Be it enacted by the Legislature of West Virginia:

That article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, to be designated section three-a, to read as follows:

Section 3-a. *Application for Registration or Renewal of Registration; Payment of Personal Property Taxes.*—Certificates of registration and renewal of registration of any vehicle or registration plates therefor shall not be issued or furnished by the department of motor vehicles, or any other officer charged with such duty, unless the applicant therefor, except an applicant exempt from payment of registration fees under section eight, article ten of this chapter, has furnished the receipt hereinafter provided to show full payment of the personal property taxes for the calendar year which immediately precedes the calendar year in which application is made on all vehicles which were registered with the department of motor vehicles in

14 the applicant's name on the tax day for the former cal-
15 endar year. If the applicant contends that any vehicle so
16 registered was not subject to personal property taxation
17 for that year, he shall furnish such information and evi-
18 dence as the commissioner of motor vehicles may require
19 to substantiate his contention.

20 The assessor shall require any person having a duty to
21 make a return of property for taxation to him to furnish
22 information identifying each vehicle subject to the reg-
23 istration provisions of this chapter. When the property
24 taxes on any such vehicle shall have been paid, the officer
25 to whom the payment was made shall deliver to the per-
26 son paying such taxes a written or printed receipt there-
27 for, and shall retain for his records a duplicate of such
28 receipt. It shall be the duty of the assessor and sheriff,
29 respectively, to see that the assessment records and the
30 receipts contain information adequately identifying the
31 vehicle as registered under the provisions of this chapter.
32 The officer receiving payment shall sign each receipt in
33 his own handwriting.

34 The assessors shall commence their duties hereunder
35 during the tax year one thousand nine hundred fifty-seven
36 and the department of motor vehicles shall commence
37 its duties hereunder as of the first day of January, one
38 thousand nine hundred fifty-eight.

39 The state tax commissioner shall annually compile a
40 schedule of automobile values, based on the lowest values
41 shown in a nationally accepted used car guide, which
42 schedule shall be furnished to each assessor and shall be
43 used by him as a guide in placing the assessed values on
44 all automobiles in his county.

CHAPTER 111

(Senate Bill No. 46—By Mr. Martin, by request)

AN ACT to amend and reenact section four, article three, chap-
ter seventeen-a of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to applica-

tions for and issuance of certificates of title for motor vehicles.

[Passed February 4, 1937; in effect ninety days from passage. Approved by the Governor.]

Article 3. Original and Renewal of Registration, Issuance of Certificates of Title.

Section

4. Application for certificate of title; tax.

Be it enacted by the Legislature of West Virginia:

That section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 4. *Application for Certificate of Title; Tax.*—

2 Certificates of registration of any vehicle or registration
3 plates therefor, whether original issues or duplicates,
4 shall not be issued or furnished by the department of
5 motor vehicles or any other officer charged with such
6 duty, unless the applicant therefor already has received,
7 or shall at the same time make application for and be
8 granted, an official certificate of title of such vehicle.
9 Such application shall be upon a blank form to be fur-
10 nished by the department of motor vehicles and shall
11 contain a full description of the vehicle, which descrip-
12 tion shall contain the manufacturer's serial or identifi-
13 cation number or other number as determined by the
14 commissioner and any distinguishing marks, together
15 with a statement of the applicant's title and of any
16 liens or encumbrances upon such vehicle, the names
17 and addresses of the holders of such liens and such other
18 information as the department of motor vehicles may re-
19 quire. The application shall be signed and sworn to by
20 the applicant. A tax is hereby imposed upon the privilege
21 of effecting the certification of title of each vehicle in the
22 amount equal to two per cent of the value of said motor
23 vehicle at the time of such certification. If the vehicle is
24 new, the actual purchase price or consideration to the

25 purchaser thereof shall be the value of said vehicle; if
26 the vehicle is a used or second-hand vehicle, the present
27 market value at time of transfer or purchase shall be
28 deemed the value thereof for the purpose of this sec-
29 tion: *Provided*, That so much of the purchase price or
30 consideration as is represented by the exchange of other
31 vehicles on which the tax herein imposed has been paid
32 by the purchaser shall be deducted from the total actual
33 price or consideration paid for said vehicle, whether the
34 same be new or second-hand; if the vehicle be acquired
35 through gift, or by any manner whatsoever, unless specifi-
36 cally exempted in this section, the present market value
37 of the vehicle at the time of the gift or transfer shall be
38 deemed the value thereof for purposes of this section. No
39 certificate of title for any vehicle shall be issued to any
40 applicant unless such applicant shall have paid to the
41 department of motor vehicles the tax imposed by this
42 section which shall be two per cent of the true and
43 actual value of the said vehicle whether the vehicle be
44 acquired through purchase, by gift, or by any other man-
45 ner whatsoever except gifts between husband and wife
46 or between parents and children; but the tax imposed by
47 this section shall not apply to vehicles to be registered as
48 class H or class I vehicles, as defined in section one, article
49 ten of this chapter, which are used or to be used in in-
50 terstate commerce, nor shall the tax imposed by this
51 section apply to titling of vehicles by a registered dealer
52 of this state for resale only, nor shall the tax imposed
53 by this section apply to titling of vehicles by this state
54 or any political subdivision thereof, or by any volunteer
55 fire department organized and incorporated under the
56 laws of the state of West Virginia for protection of life
57 or property. The total amount of revenue collected by
58 reason of this tax shall be paid into the state road fund
59 and expended by the state road commissioner in the
60 maintenance and construction of the state's secondary
61 roads. In addition to said tax, there shall be a charge of
62 one dollar for each original certificate of title so issued:
63 *Provided*, That this state or any political subdivision
64 thereof, or any such volunteer fire department, shall be
65 exempted from payment of such charge.

66 Notwithstanding the provisions of this section, the
67 owners of trailers, semi-trailers and other vehicles not
68 subject to the certificate of title tax prior to enactment
69 of this chapter shall not be required to pay the above
70 mentioned tax upon making application for a certificate of
71 title for such vehicle, but shall be required to pay a fee
72 of one dollar for the issuance of each such certificate of
73 title.

74 Such certificate shall be good for the life of the ve-
75 hicle, so long as the same is owned or held by the origi-
76 nal holder of such certificate, and need not be renewed
77 annually, or any other time, except as herein provided.

78 If, by will or direct inheritance, a person becomes
79 the owner of a motor vehicle upon which the tax herein
80 imposed has been paid, he shall not be required to pay
81 such tax.

82 A person who has paid the tax imposed by this sec-
83 tion shall not be required to pay the tax a second time
84 for the same motor vehicle, but he shall be required
85 to pay a charge of one dollar for the certificate of re-
86 title of that motor vehicle, except that such tax shall be
87 paid by such person when the title to such vehicle has
88 been transferred either in this or another state from such
89 person to another person and transferred back to such
90 person.

CHAPTER 112

(Senate Bill No. 48—By Mr. Martin, by request)

AN ACT to amend and reenact sections three, eight and nine, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to procedures, records and indexes incident to the registration of motor vehicles.

[Passed January 31, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 3. Original and Renewal of Registration, Issuance of Certificates of Title.

Section

3. Application for registration.
8. Examination of registration records and index of stolen and recovered vehicles.
9. Registration indexes.

Be it enacted by the Legislature of West Virginia:

That sections three, eight and nine, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. *Application for Registration.*—Every owner
2 of a vehicle subject to registration hereunder shall make
3 application to the department for the registration thereof
4 upon the appropriate form or forms furnished by the
5 department and every such application shall bear the
6 signature of the owner written with pen and ink, and
7 said application shall contain:

8 (1) The name, bona fide residence and mail address
9 of the owner, the name of the county in which he resides,
10 or business address of the owners if a firm, association, or
11 corporation.

12 (2) A description of the vehicle including, insofar as
13 the hereinafter specified data may exist with respect to
14 a given vehicle, the make, model, type of body, the manu-
15 facturer's serial or identification number or other num-
16 ber as determined by the commissioner.

17 (3) In the event a motor vehicle is designed, con-
18 structed, converted, or rebuilt for the transportation of
19 property, the application shall include a statement of
20 its declared gross weight if such motor vehicle is to be
21 used alone, or if such motor vehicle is to be used in com-
22 bination with other vehicles the application for registra-
23 tion of such motor vehicle shall include a statement of
24 the combined declared gross weight of such motor ve-
25 hicle and the vehicles to be drawn by such motor ve-
26 hicle; declared gross weight being the weight declared
27 by the owner to be the actual combined weight of the

28 vehicle or combination of vehicles and load when carry-
29 ing the maximum load which the owner intends to place
30 thereon; and the application for registration of each such
31 vehicle shall also include a statement of the distance
32 between the first and last axles of that vehicle or com-
33 bination of vehicles. The declared gross weight stated in
34 the application shall not exceed the permissible gross
35 weight for the axle spacing listed therein as determined
36 by the table of permissible gross weights contained in
37 chapter seventeen-c of this code; and any vehicle regis-
38 tered for a declared gross weight as stated in the applica-
39 tion shall be subject to the single-axle load limit set
40 forth in chapter seventeen-c of this code.

41 (4) Each such applicant shall state whether such ve-
42 hicle is or is not to be used in the public transportation
43 of passengers or property, or both, for compensation, and
44 if so used, or to be used, the applicants shall so certify, and
45 shall, as a condition precedent to the registration of such
46 vehicle, obtain a certificate of convenience, or permit
47 from the public service commission.

48 (5) Such further information as may reasonably be
49 required by the department to enable it to determine
50 whether the vehicle is lawfully entitled to registra-
51 tion.

52 (6) Each such application for registration shall be ac-
53 companied by the fees hereafter provided.

Sec. 8. *Examination of Registration Records and Index
2 of Stolen and Recovered Vehicles.*—The department, upon
3 receiving application for original registration of a vehicle
4 or any certificate of title, shall first check the manu-
5 facturer's serial or identification number shown in the
6 application against the indexes of registered motor vehi-
7 cles and against the index of stolen and recovered motor
8 vehicles required to be maintained by this chapter.

Sec. 9. *Registration Indexes.*—The department shall
2 file each application received and when satisfied as to
3 the genuineness and regularity thereof, and that the ap-
4 plicant is entitled to register such vehicle and to the
5 issuance of a certificate of title shall register the vehicle

6 therein described and keep a record thereof in suitable
7 books or on index cards as follows:

8 (1) Under a distinctive registration number assigned
9 to the vehicle;

10 (2) Alphabetically, under the name of the owner;

11 (3) Under the manufacturer's serial or identification
12 number if available, otherwise any other identifying
13 number of the vehicle; and

14 (4) In the discretion of the department, in any other
15 manner it may deem desirable.

CHAPTER 113

(House Bill No. 399—By Mr. Moreland)

AN ACT to amend and reenact section ten, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to issuance of registration card for motor vehicles; copy thereof to be sent to county assessor.

[Passed March 4, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 3. Original and Renewal of Registration, Issuance of Certificates of Title.

Section

10. Department to issue registration card; duplicate to county assessor.

Be it enacted by the Legislature of West Virginia:

That section ten, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 10. *Department to Issue Registration Card; Duplicate to County Assessor.*—The department upon
2 registering a vehicle shall issue a registration card to be
3

4 delivered to the owner and containing thereon the date
5 issued, the name and address of the owner, the registra-
6 tion number assigned to the vehicle and such description
7 of the vehicle as determined by the commissioner. A du-
8 plicate of said registration card shall be sent to the assessor
9 of the county in which the owner resides, or in cases of
10 nonresidents of the state, to the assessor of the county
11 wherein such vehicle is located.

CHAPTER 114

(Senate Bill No. 47—By Mr. Martin, by request)

AN ACT to amend and reenact sections ten and eleven, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dismantling or wrecking titled vehicles.

[Passed February 4, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 4. Transfers of Title or Interest.

Section

10. Owner dismantling or wrecking vehicle to return evidence of ownership.
11. Sale of motor vehicle to be dismantled.

Be it enacted by the Legislature of West Virginia:

That sections ten and eleven, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 10. *Owner Dismantling or Wrecking Vehicle to Return Evidence of Ownership.*—Any owner dismantling
3 or wrecking any titled vehicle shall immediately for-
4 ward to the department the certificate of title for such
5 vehicle with the word “scrapped” or word or words of
6 similar meaning written across the face thereof.

2 Sec. 11. *Sale of Motor Vehicle to Be Dismantled.*—Any
3 owner who sells a titled vehicle as scrap or to be dis-
4 mantled or destroyed shall assign the certificate of title
5 thereto to the purchaser who shall deliver such certifi-
6 cate so assigned to the department with the word “scrap-
7 ped” or word or words of similar meaning written across
8 the face thereof: *Provided*, That if the purchaser so
9 desires, he may obtain from the department a permit to
10 dismantle or scrap such vehicle by executing an applica-
11 tion for such permit and delivering same to the depart-
12 ment with the certificate of title so assigned. The de-
13 partment shall thereupon issue to the purchaser a permit
14 to dismantle the vehicle which shall authorize such per-
15 son to possess or transport such motor vehicle or to
16 transfer ownership thereto by endorsement upon such
17 permit. A certificate of title shall not again be issued for
18 such motor vehicle in the event it is scrapped, dismantled,
 or destroyed.

CHAPTER 115

(House Bill No. 360—By Mr. Perry and Mr. Bachmann)

AN ACT to amend and reenact sections two and three, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one hundred twenty-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-one, relating to registration fees of motor vehicles used for transportation of property and persons and the determination of declared gross weight thereof; and registration fees for vehicles equipped with pneumatic tires.

[Passed March 8, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 10. Registration, License and Other Fees.

Section

2. Registration fees of motor vehicles used for transportation of property and persons determined by declared gross weight.
3. Registration fees for vehicles equipped with pneumatic tires.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as enacted by chapter one hundred twenty-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-one, be amended and reenacted to read as follows:

Section 2. *Registration Fees of Motor Vehicles Used for Transportation of Property and Persons Determined by Declared Gross Weight.*—The declared gross weight as stated in the application for registration shall be the basis for determination of fees to be paid for operation of trucks used separately and not in combination with other vehicles in transportation of property.

The basis for determination of fees to be paid for operation of trucks, truck tractors, and road tractors used in combination with other vehicles for the transportation of property shall be the combined declared gross weight of the truck, truck tractor, or road tractor and the vehicle to be drawn by such truck, truck tractor or road tractor; the declared gross weight of the entire combination of truck, truck tractor, or road tractor and the trailer or semitrailer to be drawn by such motor vehicle to be considered as one unit for purpose of determining the fees to be paid for such truck, truck tractor, or road tractor.

The basis for determination of fees to be paid for operation of class H vehicles shall be the manufacturers declared weight plus one hundred and fifty pounds for each seat.

Sec. 3. *Registration Fees for Vehicles Equipped with Pneumatic Tires.*—The following registration fees for the classes indicated shall be paid annually to the department for the registration of vehicles subject to registration hereunder when equipped with pneumatic tires:

Class A. The registration fee for all motor vehicles of this class shall be eleven dollars for a motor vehicle of a weight of two thousand pounds or less, and for all motor vehicles having a weight of over two thousand pounds, sixty cents additional for each one hundred pounds

11 of weight, or fraction thereof, in excess of two thousand
12 pounds, and for the purpose of determining the weight
13 the actual weight of the vehicle shall be taken: *Provided,*
14 That for vehicles owned by churches, or by trustees for
15 churches, which vehicles are regularly used for trans-
16 porting parishioners to and from church services, no
17 license fee shall be charged, but notwithstanding such ex-
18 emption, the certificate of registration and license plates
19 shall be obtained the same as other cards and plates under
20 this article.

21 Class B, Class H, Class I and Class K. The registration
22 fee for all motor vehicles of these four classes shall be
23 as follows:

24 (1) For declared gross weights of four thousand pounds
25 or less—seventeen dollars and fifty cents.

26 (2) For declared gross weights of four thousand and
27 one pounds to eight thousand pounds—twenty dollars.

28 (3) For declared gross weights of eight thousand and
29 one pounds to sixteen thousand pounds—twenty dollars
30 plus forty cents for each one hundred pounds or fraction
31 thereof that the gross weight of such vehicle or combina-
32 tion of vehicles exceeds eight thousand pounds.

33 (4) For declared gross weights greater than sixteen
34 thousand pounds—sixty-two dollars plus seventy-five
35 cents for each one hundred pounds or fraction thereof
36 that the gross weight of such vehicle or combination of
37 vehicles exceeds sixteen thousand pounds.

38 If the declared gross weight of a class B, class I or class
39 K motor vehicle includes the gross weight of a class C
40 or class L vehicle used in combination with such class B,
41 class I or class K motor vehicle and the registration fee
42 prescribed hereunder for such class C or class L vehicle
43 has been paid, there shall be deducted from the registra-
44 tion fee for such class B, class I or class K motor vehicle
45 the amount of fifteen dollars.

46 Class C and class L. The registration fee for all vehicles
47 of these two classes shall be fifteen dollars.

48 Class G. The registration fee for each motorcycle hav-
49 ing two wheels shall be five dollars. The registration fee

50 for each motorcycle having three wheels shall be seven
51 dollars and fifty cents.

52 Class J. The registration fee for all motor vehicles of
53 this class shall be seventy-five dollars. Ambulances and
54 hearses used exclusively as such shall be exempted from
55 the above special fees.

56 Class R. The registration fee for all vehicles of this
57 class shall be nine dollars.

58 Class S. The registration fee for all vehicles of this
59 class shall be fifteen dollars.

60 Class T. The registration fee for all vehicles of this class
61 shall be five dollars.

62 Class U. The registration fee for all motor vehicles of
63 this class shall be fifty dollars.

CHAPTER 116

(House Bill No. 109—By Mr. Moreland)

AN ACT to amend and reenact section seven, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicle operators' and chauffeurs' licenses.

[Passed February 19, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 2. Issuance of License, Expiration and Renewal.

Section

7. Examination of applicants.

Be it enacted by the Legislature of West Virginia:

That section seven, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 7. *Examination of Applicants.*—(a) Upon the
2 exhibiting by the applicant under the age of twenty-one

3 years, of his or her birth certificate, or a certified copy
4 thereof, as evidence that the applicant is of lawful age,
5 the department of public safety shall examine every ap-
6 plicant for an operator's or chauffeur's license, except as
7 otherwise provided in this section. Such examination
8 shall include a test of the applicant's eyesight, his ability
9 to read and understand highway signs regulating, warn-
10 ing, and directing traffic, his knowledge of the traffic laws
11 of this state, and shall include an actual demonstration of
12 ability to exercise ordinary and reasonable control in the
13 operation of a motor vehicle, and such further physical
14 and mental examination as the department of motor
15 vehicles deems necessary to determine the applicant's
16 fitness to operate a motor vehicle safely upon the high-
17 ways.

18 (b) The commissioner shall adopt and promulgate regu-
19 lations concerning the examination of applicants for
20 operator's and chauffeur's licenses and the qualifications
21 required of such applicants, and the examination of such
22 applicants by the department of public safety shall be in
23 accordance with such regulations.

CHAPTER 117

(Senate Bill No. 167—By Mr. Bean, Mr. President)

AN ACT to amend and reenact section two, article five, chapter
seventeen-c of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the of-
fense of driving any vehicle while under the influence of
intoxicating liquor or drugs and to the penalties therefor.

[Passed March 4, 1957; in effect ninety days from passage. Approved by the
Governor.]

Article 5. Negligent Homicide, Driving While Intoxicated and Reckless Driving.

Section

2. Persons under the influence of intoxicating liquor or of drugs.

Be it enacted by the Legislature of West Virginia:

That section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2. *Persons under the Influence of Intoxicating*

2 *Liquor or of Drugs.*—(a) It is unlawful and punishable
3 as provided in paragraph (c) of this section for any per-
4 son who is under the influence of intoxicating liquor to
5 drive any vehicle on any highway of this state or for any
6 owner of such vehicle to knowingly permit the same to
7 be so operated by one under the influence of intoxicating
8 liquor.

9 (b) It is unlawful and punishable as provided in para-
10 graph (c) of this section for any person who is an habitual
11 user of or under the influence of any narcotic drug or
12 who is under the influence of any other drug to a degree
13 which renders him incapable of safely driving a vehicle
14 to drive a vehicle within this state. The fact that any per-
15 son charged with a violation of this paragraph is or has
16 been entitled to use such drug under the law of this state
17 shall not constitute a defense against any charges of vio-
18 lating this paragraph.

19 (c) A person violating any provision of this section
20 shall, for the first offense, be guilty of a misdemeanor
21 and, upon conviction thereof, shall be punished by
22 imprisonment in the county jail for a period of not
23 less than twenty-four hours nor more than six months,
24 and, in addition to such mandatory jail sentence, such
25 person may be fined not less than fifty nor more than one
26 hundred dollars; and, in every case of conviction under
27 this section, such convicted person's operator's or chauf-
28 feur's license shall be revoked for a period of six months.
29 A person violating any provision of this section shall,
30 for the second offense, occurring within a five-year period,
31 be guilty of a misdemeanor, and, upon conviction thereof,
32 shall be punished by imprisonment in the county jail for a
33 period of not less than six months nor more than one year,
34 which sentence shall not be subject to probation; and
35 whenever the records of the department disclose that a

36 conviction is the second such conviction of such person,
37 within a period of five years, for a violation of this section,
38 his operator's or chauffeur's license shall be revoked by the
39 commissioner for a period of ten years, unless reissued by
40 the department of motor vehicles as hereinafter provided.
41 Whenever the commissioner of motor vehicles, after full
42 investigation, shall find that the character of any person
43 who was convicted of a second offense under this section
44 and the circumstances at the time indicate that he is not
45 likely again to repeat his offense, and that the public
46 good does not require that his license be longer revoked,
47 the commissioner may if it is deemed advisable reissue
48 such license at any time more than five years after the
49 date on which it was revoked. A person violating any
50 provision of this section shall, for the third or any subse-
51 quent offense, occurring within a five-year period, be
52 guilty of a felony, and, upon conviction thereof, shall be
53 punished by imprisonment in the penitentiary for not
54 less than one nor more than three years; and whenever
55 the records of the department disclose that a conviction
56 is the third such or any subsequent conviction of such
57 person, within a period of five years, for a violation of
58 this section, his operator's or chauffeur's license shall be
59 revoked by the commissioner for a period of ten years
60 and indefinitely thereafter unless reissued as hereinafter
61 provided. Whenever the commissioner of motor vehicles,
62 after full investigation, shall find that the character of
63 any person who was convicted of a third or subsequent
64 offense under this section and the circumstances at the
65 time indicate that he is not likely again to repeat his of-
66 fense, and the public good does not require that his license
67 be longer revoked, the commissioner may if it is deemed
68 advisable reissue such license at any time more than ten
69 years after the date on which it was revoked. The dis-
70 cretionary power herein conferred may be exercised by
71 the commissioner and the department of motor vehicles
72 with respect to the reissuing of licenses revoked because
73 of convictions prior to the passage hereof.

CHAPTER 118

(Senate Bill No. 165—By Mr. Bean, Mr. President)

AN ACT to amend article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to proof of being under the influence of intoxicating liquor.

[Passed February 12, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 5. Negligent Homicide, Driving While Intoxicated and Reckless Driving.

Section

2-a. Under the influence of intoxicating liquor; proof.

Be it enacted by the Legislature of West Virginia:

That article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two-a, to read as follows:

Section 2-a. *Under the Influence of Intoxicating Liquor;*
2 *Proof.*—In any criminal prosecution for a violation of sub-
3 section (a) of section two of this article, relating to driv-
4 ing any vehicle on any highway of this state while under
5 the influence of intoxicating liquor or the owner's know-
6 ingly permitting the same to be so operated by one under
7 the influence of intoxicating liquor, the court may admit
8 evidence of the amount of alcohol in the operator's blood
9 taken within two hours of the time of the alleged of-
10 fense, as shown by a chemical analysis of his blood or
11 urine. For the purposes of such prosecutions, evidence
12 that there was, at the time of the alleged offense, five-
13 hundredths of one per cent, or less, by weight of alcohol
14 in his blood, is prima facie evidence that he was not under
15 the influence of intoxicating liquor; evidence that there
16 was at that time more than five-hundredths of one per

17 cent and less than fifteen-hundredths of one per cent by
18 weight of alcohol in his blood is relevant evidence, but it
19 is not to be given prima facie effect in indicating whether
20 he was under the influence of intoxicating liquor; and evi-
21 dence that there was at that time fifteen-hundredths of
22 one per cent, or more, by weight of alcohol in his blood, is
23 prima facie evidence that he was under the influence of
24 intoxicating liquor.

25 Any person arrested for and/or charged with the of-
26 fense of driving any vehicle on any highway of this state
27 while under the influence of intoxicating liquor shall
28 have the right to demand that his blood or urine be taken
29 within the time aforesaid and such chemical analysis be
30 made thereof.

31 In any case in which such a chemical analysis has been
32 made, the results of same shall be disclosed and made
33 available to a defendant forthwith upon demand.

CHAPTER 119

(Senate Bill No. 166—By Mr. Bean, Mr. President)

AN ACT to amend article six, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven, relating to the use of microwaves in checking the speed of motor vehicles.

[Passed February 11, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 6. Speed Restrictions.

Section

7. Prima facie evidence of speed by devices employing microwaves; placing of signs.

Be it enacted by the Legislature of West Virginia:

That article six, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto a new section, designated section seven, to read as follows:

Section 7. *Prima Facie Evidence of Speed by Devices Employing Microwaves; Placing of Signs.*—The speed of a motor vehicle may be proved by evidence obtained by use of any device designed to measure and indicate or record the speed of a moving object by means of microwaves, when such evidence is obtained by members of the department of public safety, by police officers of incorporated municipalities in classes one, two and three, as defined in chapter eight-a of this code, and by the sheriff and his deputies of the several counties of the state. The evidence so obtained shall be accepted as prima facie evidence of the speed of such vehicle.

In order to inform and educate the public generally that speed of motor vehicles operating within the state is being tested by radar mechanisms, the state road commission shall locate and place suitable and informative stationary and movable signs at strategic points on and along highways in each county of the state giving notice to the public that such radar mechanisms are in use.

CHAPTER 120

(Senate Bill No. 308—Originating in the
Senate Committee on Roads and Navigation)

AN ACT to amend and reenact section four, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to headlamps and size.

[Passed March 5, 1957; in effect from passage. Approved by the Governor.]

Article 15. Equipment.

Section

4. Headlamps on motor vehicles.

Be it enacted by the Legislature of West Virginia:

That section four, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 4. *Headlamps on Motor Vehicles.*—(a) Every
2 motor vehicle other than a motorcycle or motor-driven
3 cycle shall be equipped with at least two headlamps with
4 at least one on each side of the front of the motor vehicle,
5 which headlamps shall comply with the requirements and
6 limitations set forth in this article.

7 (b) Every motorcycle and every motor-driven cycle
8 shall be equipped with at least one and not more than
9 two headlamps which shall comply with the requirements
10 and limitations of this article.

11 (c) Every headlamp upon every motor vehicle, in-
12 cluding every motorcycle and motor-driven cycle, shall
13 be located at a height measured from the center of the
14 headlamp of not more than fifty-four inches nor less than
15 twenty-two inches to be measured as set forth in section
16 three of this article.

—c—

CHAPTER 121

(Senate Bill No. 94—By Mr. Martin, by request)

AN ACT to amend article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to penalties for failure to comply with vehicle inspection requirements.

[Passed February 28, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 16. Inspection of Vehicles.

Section

9. Penalty for misdemeanor.

Be it enacted by the Legislature of West Virginia:

That article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nine, to read as follows:

Section 9. *Penalty for Misdemeanor.*—It is a misdemeanor for any owner or operator, or both owner and operator, of any vehicle required to be inspected under subsection (a), section four of this article, to operate or permit to be operated such vehicle without having displayed thereon a current and valid certificate of inspection and approval or fail to produce same upon demand of any authorized person as designated under subsection (a), section four of this article.

Unless another penalty is by the laws of this state provided, every person convicted of a misdemeanor for operating a vehicle without having displayed thereon a current and valid certificate of inspection and approval or for failure to produce such certificate upon demand of an authorized person shall be punished by a fine of not more than one hundred dollars.

CHAPTER 122

(Senate Bill No. 254—By Mr. Carrigan)

AN ACT to amend and reenact sections one, four, six, nine, ten, eleven and fourteen, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to size, weight and load of vehicles and prescribing penalties for the violation thereof.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 17. Size, Weight and Load.

Section

1. Scope and effect of article.
4. Height and length of vehicles and loads.

6. Loads on vehicles.
9. Gross weight of vehicles and loads.
10. Officers may weigh vehicles and require removal or rearrangement of excess loads.
11. Permits for excess size and weight.
14. Penalties for violation of weight laws; impounding vehicles.

Be it enacted by the Legislature of West Virginia:

That sections one, four, six, nine, ten, eleven and fourteen, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *Scope and Effect of Article.*—(a) It shall be
2 unlawful for any owner, lessee or borrower of a vehicle
3 or combination of vehicles to operate on any highway
4 such vehicle or combination of vehicles, whether driven
5 by such owner, lessee or borrower, or by some person on
6 behalf of such owner, lessee or borrower, of a size or
7 weight exceeding any limitation stated in this article, or
8 otherwise in violation of any provision of this article,
9 whether such limitation or provision be specifically stated
10 in this article or set by express authority granted in this
11 article, and the maximum size and weight of vehicles
12 herein specified shall be lawful throughout this state, and
13 local authorities shall have no power or authority to alter
14 said limitations or provisions except as express authority
15 shall be granted in this article. Subject to the penalties
16 for weight violations provided in section 14 of this article,
17 violation of this section shall constitute a misdemeanor.

18 (b) The provisions of this article governing size,
19 weight, and load shall not apply to fire apparatus, road
20 machinery, or to implements of husbandry, including
21 farm tractors, temporarily moved upon a highway, or to
22 a vehicle operated under the terms of a special permit
23 issued as herein provided.

24 (c) The phrase "operate a vehicle or combination of
25 vehicles" shall in this article be interpreted to mean the
26 use of such vehicle or combination of vehicles on behalf
27 of the owner, lessee or borrower, whether driven by him
28 or by some person on behalf of him.

Sec. 4. *Height and Length of Vehicles and Loads.*—(a)
2 No vehicle including any load thereon shall exceed a

3 height of twelve feet six inches, except that vehicles used
4 as automobile transports including any load thereon shall
5 not exceed a height of thirteen feet six inches, but the
6 owners of such automobile transports shall be responsible
7 to the state road commission for any damage to bridges
8 or other road structures and to municipalities and utility
9 companies for any damage to wires, traffic devices or
10 other structures, and to any person suffering property
11 damage when any such damage is proximately caused by
12 the height of such vehicle or vehicles and load being in
13 excess of twelve feet six inches.

14 (b) No vehicle including any load thereon shall exceed
15 a length of thirty-five feet extreme over-all dimension,
16 inclusive of front and rear bumpers, except that a bus
17 or trackless trolley coach equipped with three axles shall
18 not exceed an over-all length, inclusive of front and rear
19 bumpers, of forty feet.

20 (c) No combination of vehicles coupled together shall
21 consist of more than two units and no such combination
22 of vehicles including any load thereon shall have an over-
23 all length, inclusive of front and rear bumpers, in excess
24 of fifty feet, except as otherwise provided in respect to
25 the use of a pole trailer as authorized in section five of
26 this article.

Sec. 6. *Loads on Vehicles.*—(a) No vehicle or combina-
2 tion of vehicles shall be operated on any highway unless
3 such vehicle or combination of vehicles is so constructed
4 or loaded as to prevent any of its load from dropping,
5 sifting, leaking, or otherwise escaping therefrom, except
6 that sand may be dropped for the purpose of securing
7 traction, or water or other substance may be sprinkled
8 on a roadway in cleaning or maintaining such roadway.

9 (b) It shall be unlawful to operate on any highway
10 any vehicle or combination of vehicles with any load un-
11 less said load and any covering thereon is securely fas-
12 tened so as to prevent said covering or load from becom-
13 ing loose, detached, or in any manner a hazard to other
14 users of the highway.

Sec. 9. *Gross Weight of Vehicles and Loads.*—(a) It

2 shall be unlawful for any owner, lessee or borrower of a
 3 vehicle or combination of vehicles to operate on any high-
 4 way such vehicle or combination of vehicles with a gross
 5 weight in excess of the gross weight for which such
 6 vehicle or combination of vehicles is registered or in ex-
 7 cess of any weight limitation set forth in this chapter,
 8 whether such limitation be specifically stated in this chap-
 9 ter or set by express authority granted in this chapter.

10 (b) Subject to the limit upon the weight imposed upon
 11 the highway through any one axle as set forth in section
 12 eight of this article the total gross weight with load im-
 13 posed upon the highway by any one group of two or more
 14 consecutive axles of a vehicle or combination of vehicles
 15 shall not exceed the gross weight given for the respective
 16 distance between the first and last axle of the total group
 17 of axles measured longitudinally to the nearest foot as set
 18 forth in the following table:

19	Distance in	Maximum	Distance in	Maximum
20	feet between	load in	feet between	load in
21	first and	pounds	first and	pounds
22	last axles	on group	last axles	on group
23	of group	of axles	of group	of axles
24	4.....	32,000	31.....	53,490
25	5.....	32,000	32.....	54,330
26	6.....	32,000	33.....	55,160
27	7.....	32,000	34.....	55,980
28	8.....	32,610	35.....	56,800
29	9.....	33,580	36.....	57,610
30	10.....	34,550	37.....	58,420
31	11.....	35,510	38.....	59,220
32	12.....	36,470	39.....	60,010
33	13.....	37,420	40.....	60,800
34	14.....	38,360	41.....	61,580
35	15.....	39,300	42.....	62,360
36	16.....	40,230	43.....	63,130
37	17.....	41,160	44.....	63,890
38	18.....	42,080	45.....	64,650
39	19.....	42,990	46.....	65,400
40	20.....	43,900	47.....	66,150
41	21.....	44,800	48.....	66,890

42	22.....	45,700	49.....	67,620
43	23.....	46,590	50.....	68,350
44	24.....	47,470	51.....	69,070
45	25.....	48,350	52.....	69,790
46	26.....	49,220	53.....	70,500
47	27.....	50,090	54.....	71,200
48	28.....	50,950	55.....	71,900
49	29.....	51,800	56.....	72,590
50	30.....	52,650	57.....	73,280

51 *Provided*, That no vehicle or combination of vehicles
 52 shall have a gross weight including the load, in excess of
 53 sixty thousand eight hundred pounds, except as otherwise
 54 provided in this article.

Sec. 10. *Officers May Weigh Vehicles and Require Re-*
 2 *moval or Rearrangement of Excess Loads.*—(a) Any po-
 3 lice officer, or employee of the state road commission
 4 designated by the state road commissioner as a member
 5 of an official weighing crew, may require the driver of
 6 any vehicle or combination of vehicles on any highway to
 7 stop and submit such vehicle or combination of vehicles
 8 to a weighing with portable or stationary weighing de-
 9 vices, or submit such vehicle or combination of vehicles
 10 to a measuring or to any other examination necessary to
 11 determine if such vehicle or combination of vehicles is in
 12 violation of any of the provisions of this article, and may
 13 require that such vehicle or combination of vehicles be
 14 driven to the nearest weighing device in the event such
 15 weighing device is within two miles.

16 (b) Whenever an officer or a member of an official
 17 weighing crew determines that a vehicle or combination
 18 of vehicles is in violation of any of the provisions of this
 19 article, he may require the driver to stop such vehicle or
 20 combination of vehicles in a suitable place to remain
 21 standing until such vehicle or combination of vehicles is
 22 brought into conformity with the provisions violated. In
 23 the case of a weight violation all material unloaded shall
 24 be cared for by the owner, lessee or borrower of such
 25 vehicle or combination of vehicles at the risk of such
 26 owner, lessee or borrower.

27 (c) Any driver of a vehicle or combination of vehicles
28 who fails or refuses to comply with any requirement or
29 provision of this section shall be guilty of a misdemeanor.

Sec. 11. *Permits for Excess Size and Weight.*—(a) The
2 state road commissioner may in his discretion upon appli-
3 cation in writing and good cause being shown therefor
4 issue a special permit in writing authorizing the applicant
5 to operate or move a vehicle or combination of vehicles
6 of a size or weight of vehicles or load exceeding the
7 maximum specified in this chapter or otherwise not in
8 conformity with the provisions of this chapter, except
9 that a permit shall not be issued for continuous operation
10 of a vehicle not in conformity with the provisions of this
11 article relating to weight limitations: *Provided, however,*
12 *That specially designed vehicles which can only be used*
13 *to transport and haul specific liquid or semi-liquid prod-*
14 *ucts and which were registered in this state prior to the*
15 *first day of July, one thousand nine hundred fifty-one,*
16 *shall be exempt from the provisions of this chapter re-*
17 *lating to weight limitations until the first day of July,*
18 *one thousand nine hundred sixty-one, and on and after*
19 *the latter said date said exemptions shall not apply. In*
20 *order for the exemption to apply during the period of*
21 *exemption the owner or operator shall apply for and the*
22 *state road commissioner shall issue a permit for such ve-*
23 *hicle allowing such owner or operator to use the same*
24 *upon the highways of this state during said period.*

25 (b) The application for any such permit shall specifi-
26 cally describe the vehicle or vehicles and load to be oper-
27 ated or moved and the particular highway for which per-
28 mit to operate is requested, and whether such permit is
29 requested for a single trip or for continuous operation.

30 (c) The state road commissioner is authorized to issue
31 or withhold such permit at his discretion; or, if such per-
32 mit is issued, to limit the number of trips, or to establish
33 seasonal or other time limitations within which the ve-
34 hicles described may be operated on the highways indi-
35 cated, or otherwise to limit or prescribe conditions of
36 operation of such vehicle or vehicles, when necessary to
37 assure against undue damage to the road foundations,

38 surfaces or structures, and may require such undertaking
39 or other security as may be deemed necessary to compen-
40 sate for any injury to any roadway structure.

41 (d) Every such permit shall be carried in the vehicle
42 or combination of vehicles to which it refers and shall be
43 open to inspection by any police officer or authorized
44 agent of the state road commissioner granting such per-
45 mit, and no person shall violate any of the terms or con-
46 ditions of such special permit.

Sec. 14. *Penalties for Violation of Weight Laws; Im-*
2 *pounding Vehicles.*—(a) Any owner, lessee or borrower
3 who permits a vehicle or combination of vehicles owned
4 by him to be operated with any axle load in excess of that
5 permitted by section eight of this article, plus a tolerance
6 of five per cent, or with a total gross weight in excess of
7 that permitted by section nine of this article, plus a toler-
8 ance of five per cent, shall be guilty of a misdemeanor and
9 upon conviction thereof shall be punished as provided in
10 paragraphs (b) and (c) of this section.

11 (b) Any owner, lessee or borrower of a vehicle who
12 shall be convicted of a first offense for a violation of this
13 section shall be punished by a fine of not less than twenty-
14 five dollars nor more than one hundred dollars and in
15 addition thereto shall pay either a fine of one cent per
16 pound for any weight in excess of two thousand pounds
17 over the legal weight for each axle or a fine of one cent
18 per pound for any weight in excess of two thousand
19 pounds over the permissible gross weight for such vehicle
20 or combination of vehicles, whichever is the greater; and
21 any owner, lessee or borrower of a vehicle who shall be
22 convicted of a second offense for a violation of this section
23 shall be punished by a fine of not less than fifty dollars
24 nor more than one hundred dollars and in addition thereto
25 shall pay either a fine of two cents per pound for any
26 weight in excess of two thousand pounds over the legal
27 weight for each axle or a fine of two cents per pound for
28 any weight in excess of two thousand pounds over the
29 permissible gross weight for such vehicle or combination
30 of vehicles, whichever is the greater; and any owner,
31 lessee or borrower who shall be convicted of a third or

32 subsequent violation of this section shall be punished by
33 a fine of not less than seventy-five dollars nor more than
34 one hundred dollars and in addition thereto shall pay
35 either a fine of three cents per pound for any weight in
36 excess of two thousand pounds over the legal weight for
37 each axle or a fine of three cents per pound for any weight
38 in excess of two thousand pounds over the permissible
39 gross weight for such vehicle or combination of vehicles,
40 whichever is the greater, and in any case where the gross
41 weight exceeds the statutory limit by five thousand
42 pounds or more, the owner, lessee or borrower of such
43 vehicle shall be fined five cents per pound for each pound
44 of excess gross weight over the said statutory limit, which
45 fine shall be in lieu of the additional fine per pound here-
46 tofore in this section provided.

47 (c) In the event any owner, lessee or borrower of a
48 vehicle is charged with violating this section, the vehicle
49 which is charged to be overloaded shall be impounded by
50 the arresting officer and shall not be released to such
51 owner, lessee or borrower unless and until such owner,
52 lessee or borrower either shall have been found guilty
53 and paid any fine assessed against such owner, lessee or
54 borrower, or shall have furnished cash or surety bond in
55 at least double the amount of the fine which may be
56 assessed against such owner, lessee or borrower for such
57 violation of this section and conditioned upon the pay-
58 ment of any such fine and costs assessed for such violation,
59 or shall have been acquitted of such charge. Such owner,
60 lessee or borrower shall be liable for any reasonable stor-
61 age costs incurred in storing such vehicles.

CHAPTER 123

(House Bill No. 304—By Mr. Whaley)

AN ACT to amend and reenact section three, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipi-

pal combined waterworks and sewerage systems and the issuance of revenue bonds in connection therewith.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 13. Combined Waterworks and Sewerage Systems.

Section

3. Refund of outstanding obligations or securities; issuance of bonds.

Be it enacted by the Legislature of West Virginia:

That section three, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. *Refund of Outstanding Obligations or Securities; Issuance of Bonds.*—Whenever a waterworks and sewerage system is included in a combined waterworks and sewerage system under this article and there are unpaid and outstanding revenue bonds or any other obligations or securities previously issued which are payable solely from the revenues of such waterworks or such sewerage system or any part thereof, such outstanding bonds, obligations or securities may be refunded by the issue and sale or exchange therefor of revenue bonds to be issued under the provisions of this article. For the purpose of defraying the cost of acquiring or constructing any such waterworks or sewerage systems, or both, and for the purpose of paying the cost of constructing any extensions or improvements to any such combined waterworks and sewerage system any such municipality may issue revenue bonds under the provisions of this article. All such bonds may be authorized, issued and sold pursuant to ordinance in installments at different times or an entire issue or series may be sold at one time. Such bonds shall bear interest at a rate not to exceed six per cent per annum payable semi-annually and shall mature within the period of usefulness of the project involved, to be determined by the governing body and in any event

25 not more than forty years. Such bonds may be in such
26 denomination or denominations, may be in such form,
27 either coupon or registered, may carry such registration
28 and conversion privileges, may be executed in such man-
29 ner, may be payable in such medium of payment, at such
30 place or places, may be subject to such terms of redemp-
31 tion, with or without a premium, may be declared to be-
32 come due before the maturity date thereof, may provide
33 for the replacement of mutilated, destroyed, stolen, or lost
34 bonds, may be authenticated in such manner and upon
35 compliance with such conditions, and may contain such
36 other terms and covenants, as may be provided by ordi-
37 nance of the governing body of the municipality. Not-
38 withstanding the form or tenor thereof, and in the absence
39 of an express recital on the face thereof that the bond is
40 non-negotiable, all such bonds shall at all times be, and
41 shall be treated as, negotiable instruments for all pur-
42 poses. Such bonds may be sold in such manner as the
43 governing body shall determine and if issued to bear
44 interest at the rate of six per cent per annum shall be
45 sold for not less than par and accrued interest. If any
46 such bonds shall be issued to bear interest at a rate of
47 less than six per cent per annum, the minimum price
48 at which they may be sold shall be such that the interest
49 cost to such municipality of the proceeds of such bonds
50 shall not exceed six per cent per annum computed to
51 maturity according to the standard table of bond values:
52 *Provided*, That if the governing body of the municipality
53 determines to sell any revenue bonds of such combined
54 waterworks and sewerage system for refunding purposes
55 such bonds shall be sold at not less than par and accrued
56 interest and the proceeds deposited at the place of pay-
57 ment of the bonds, obligations or securities being refunded
58 thereby. In case any officer whose signature appears on
59 such bonds or coupons attached thereto shall cease to be
60 such officer before the delivery of the bonds to the pur-
61 chaser, such signature shall nevertheless be valid and
62 sufficient for all purposes, with the same effect as if he
63 had remained in office until the delivery of the bonds.
64 Such bonds shall have all the qualities of negotiable in-

65 struments under the law of this state. Whenever any
66 outstanding bonds, obligations or securities previously
67 issued which are payable solely from the revenues of any
68 waterworks or sewerage system included in a combined
69 waterworks and sewerage system under this article are
70 refunded, if the refunding is to be accomplished by ex-
71 change such outstanding bonds, obligations or securities
72 shall be surrendered and exchanged for revenue bonds
73 of such combined waterworks and sewerage system of a
74 total principal amount which shall not be more and may
75 be less than the principal amount of the bonds, obliga-
76 tions or securities surrendered and exchanged plus the
77 interest to accrue thereon to the date of surrender and
78 exchange, and if the refunding is to be accomplished
79 through the sale of revenue bonds of such combined
80 waterworks and sewerage system the total principal
81 amount of such revenue bonds which may be sold for
82 refunding purposes shall not exceed the principal amount
83 of the bonds, obligations or securities being refunded plus
84 the interest to accrue thereon to the retirement date or
85 the next succeeding interest payment date, whichever
86 date may be the earlier. Provision may be made that each
87 bond to be exchanged for refunding bonds shall be kept
88 intact and shall not be cancelled or destroyed until the
89 refunding bonds, and interest thereon, have been finally
90 paid and discharged; but shall be stamped with a legend
91 to the effect that such bonds have been refunded pursuant
92 to this article.

CHAPTER 124

(House Bill No. 107—By Mr. Lile)

AN ACT to amend and reenact section three-a, article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power of a municipal corporation to appoint a police court judge.

[Passed February 12, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 4. Powers, Duties and Allied Relations of Municipal Corporations, Councils or Officers.

Section

3-a. Appointment of police court judge.

Be it enacted by the Legislature of West Virginia:

That section three-a, article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3-a. *Appointment of Police Court Judge.*—The
 2 governing body of any municipality with a population of
 3 two thousand or more may provide, by ordinance, for the
 4 appointment therein of an officer to be known as police
 5 court judge and fix his compensation within the limits
 6 of the respective applicable charter provisions, and pre-
 7 scribe the exercise by him of such of the powers and
 8 duties set forth in section three of article four and similar
 9 or related powers and duties enumerated in the respective
 10 applicable charter provisions, as is deemed proper by the
 11 respective governing

CHAPTER 125

(Com. Sub. for House Bill No. 187—Originating in the House
 Committee on Counties, Districts and Municipalities)

AN ACT to amend and reenact sections ten-g and ten-h, article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of officers of class I and class II cities.

[Passed March 9, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 4. Powers, Duties and Allied Relations of Municipal Corporations, Councils or Officers.

Section

10-g. Salaries of officers of class I cities.
 10-h. Salaries of officers of class II cities.

Be it enacted by the Legislature of West Virginia:

That sections ten-g and ten-h, article four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 10-g. *Salaries of Officers of Class I Cities.*—

2 Notwithstanding any provision of its existing charter to
3 the contrary, the governing board of any class I city, as
4 defined in section four, article one, chapter eight-a of this
5 code, shall have the authority to fix the salary of certain
6 of its officers within the following limitations:

7 (1) The salary of the mayor shall not exceed ten thou-
8 sand dollars.

9 (2) The salary of the city manager shall not exceed
10 eight thousand dollars.

11 (3) The salary of the city attorney and the city en-
12 gineer shall not exceed eight thousand dollars.

13 (4) The salary of the members of the city council shall
14 not exceed twenty dollars per meeting, nor shall any
15 councilman receive in excess of the sum of four hundred
16 eighty dollars per year.

17 The authority granted by this section shall in no case
18 be construed to deprive any class I city of any authority
19 under its existing charter to fix the salary of the officers
20 named above in excess of the limits imposed by this sec-
21 tion.

22 This section shall not be construed to prohibit a class I
23 city from paying salaries to its mayor, city manager, mem-
24 bers of the city council, city attorney and city engineer
25 in excess of the maximum salaries hereinabove provided,
26 if such city adopts a charter under the provisions of the
27 home rule act.

Sec. 10-h. *Salaries of Officers of Class II Cities.*—Not-

2 notwithstanding any provision of its existing charter to
3 the contrary, the governing board of any class II city,
4 as defined in section four, article one, chapter eight-a of
5 this code, shall have the authority to fix the salary of
6 certain of its officers within the following limitations:

7 (1) The salary of the mayor shall not exceed seven
8 thousand five hundred dollars.

9 (2) The salaries of the city manager, and the members
10 of the council or governing body whose duties as pre-
11 scribed by such existing charter include the supervision
12 and administration of one or more departments of such
13 class II city, shall not exceed seven thousand dollars.

14 The authority granted by this section shall in no case
15 be construed to deprive any class II city of any authority
16 under its existing charter to fix the salary of the officers
17 named above at a salary in excess of the limits imposed
18 by this section.

19 This section shall not be construed to prohibit a class
20 II city from paying salaries to its mayor and city manager
21 in excess of the maximum salaries hereinabove provided,
22 if such city adopts a charter under the provisions of the
23 home rule act.

CHAPTER 126

(Senate Bill No. 72—By Mr. Carson)

AN ACT to amend and reenact section sixteen, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to firemen's and policemen's pensions or relief funds.

[Passed February 4, 1957; in effect from passage. Approved by the Governor.]

Article 6. Fire Department, Fire Companies, and Firemen's and Policemen's Pensions or Relief Funds.

Section

16. How trustees of funds to invest money received.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 16. *How Trustees of Funds to Invest Money Received.*—The said board of trustees shall invest any

3 moneys received by them either in interest-bearing bonds
4 of the United States, or of the state of West Virginia, or
5 of the county, school district or municipal corporation in
6 which such municipality may be situated, or upon im-
7 proved real estate first lien security worth at least twice
8 the amount loaned thereon, based on sound appraisal by
9 a competent appraiser and duly certified by him, or in
10 savings accounts in state and national banking in-
11 stitutions to the extent that such institutions are insured
12 by the Federal Depositors' Insurance corporation, or in
13 state building and loan associations or federal savings
14 and loan associations to the extent that such associations
15 are insured by the Federal Savings and Loan Insurance
16 corporation, or by any other similar federal instrumen-
17 tality that may be hereafter created. Said board of trus-
18 tees shall make a report to the council of the municipality
19 on the condition of such fund on the thirty-first day of
20 December of each year.

CHAPTER 127

(Com. Sub. for Senate Bill No. 339—Originating in the
Senate Committee on the Judiciary)

AN ACT to amend article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-b, requiring municipalities to maintain and repair sewerage systems outside the corporate limits thereof when such municipalities collect charges and compensation from users of such sewerage systems.

[Passed March 9, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 13. Combined Waterworks and Sewerage Systems.

Section

2-b. Municipal sewerage systems outside corporate limits; repair and maintenance.

Be it enacted by the Legislature of West Virginia:

That article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two-b, to read as follows:

Section 2-b. *Municipal Sewerage Systems Outside Corporate Limits; Repair and Maintenance.*—Whenever a municipality collects charges and compensation from users of any part of a sewerage system located outside the corporate limits of such municipality for sewerage services rendered to such users, pursuant to the provisions of this article or any other act or law, such municipality shall be responsible for the maintenance and repair of such sewerage system and the county court of the county, in which such sewerage system is located, shall not be liable or responsible for maintenance and repair of such sewerage system.

CHAPTER 128

(House Bill No. 234—By Mr. Barr)

AN ACT to amend article four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-b, relating to the appointment of notaries public.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 4. Notaries Public and Commissioners.

Section

2-b. Appointments and commissions for the entire state.

Be it enacted by the Legislature of West Virginia:

That article four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto a new section, designated section two-b, to read as follows:

Section 2-b. *Appointments and Commissions for the Entire State.*—The governor shall appoint and commission so many notaries for the state as he may deem proper, who shall hold their office respectively for a term of ten years from the date of their commission. Before such appointment is made, the applicant shall qualify as set forth in section two and upon such appointment, without further qualification, shall thereupon have the right to exercise all the functions of his office in any county within the state. Any notary so appointed may be removed or his office vacated in the manner prescribed by law. The seal of any notary public so appointed shall contain the words “state of West Virginia” instead of any particular county designation. The fee for such appointment shall be forty dollars: *Provided, however,* That prior to such appointment, each applicant shall give a surety bond, to be approved by the secretary of state, in a penalty of five hundred dollars, which bond shall be filed and recorded in the office of the secretary of state.

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CHAPTER 129

(House Bill No. 116—By Mr. Booth)

AN ACT to amend and reenact section five, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to qualifications for registration as a pharmacist.

[Passed February 19, 1957; in effect from passage. Approved by the Governor.]

Article 5. Pharmacists, Assistant Pharmacists and Drug Stores.

Section

5. Qualifications for registration as a pharmacist; certificates of registration.

Be it enacted by the Legislature of West Virginia:

That section five, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 5. *Qualifications for Registration as a Pharmacist; Certificates of Registration.*—In order to be registered as a pharmacist within the meaning of this article, a person shall be a citizen of the United States, not less than twenty-one years of age, shall present to the board of pharmacy satisfactory evidence that he is a graduate of a recognized school of pharmacy as defined by the board of pharmacy, and in addition thereto he shall have had at least one year of practical experience in a pharmacy or drug store under the instruction and supervision of a registered pharmacist and shall pass satisfactorily an examination by or under the direction of the board of pharmacy.

Every applicant for registration as a pharmacist shall present to the board of pharmacy satisfactory evidence that he is a person of good moral character and not addicted to drunkenness or the use of narcotic drugs. The board shall issue certificates of registration to all persons who successfully pass the required examination and are otherwise qualified, and to all those whose certificates or licenses the board shall accept in lieu of an examination as provided in the next succeeding section.

CHAPTER 130

(House Bill No. 46—By Mr. Brotherton and Mr. Crynock)

AN ACT to amend and reenact section five, article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter one hundred fifty, acts of the Legislature, regular session, one thousand nine hundred fifty-one, relating to the renewal of license, reinstatement, fees required therefor, and penalties imposed upon registered nurses licensed under the pro-

visions of said article seven, chapter thirty of said code of West Virginia.

[Passed February 5, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 7. Nurses.

Section

5. Renewal of license; reinstatement; fees required; penalties.

Be it enacted by the Legislature of West Virginia:

That section five, article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as last amended by chapter one hundred fifty, acts of the Legislature, regular session, one thousand nine hundred fifty-one, be amended and reenacted to read as follows:

Section 5. *Renewal of License; Reinstatement; Fees Required; Penalties.*—The license of every nurse licensed and registered under the provisions of this article shall be annually renewed except as hereinafter provided. On or before January first, one thousand nine hundred fifty-eight, the board shall mail an application for renewal of license to every known active nurse who has ever been licensed as a registered nurse in this state. At such time or times as the board may in its discretion determine each year thereafter, the board shall mail a renewal application to every such nurse whose license was renewed during the previous year and each such nurse shall fill in such application blank and return it to the board with a renewal fee of three dollars within thirty days after receipt of said renewal application. Upon receipt of the application fee the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the current year. Such certificate of renewal shall render the holder thereof a legal practitioner for the period stated on the certificate of renewal. Any licensee who allows his or her license to lapse by failing to renew the license as provided above may be reinstated by the board on satisfactory explanation for such failure to renew his or her license and on payment to the board of a reinstatement fee of three dollars and the renewal fee herein pro-

26 vided. Any person practicing registered nursing during
27 the time his or her license has lapsed shall be considered
28 an illegal practitioner and shall be subject to the penalties
29 provided for violation of this article. A person licensed
30 under the provisions of this article desiring to retire from
31 practice temporarily shall send a written notice to the
32 board. Upon receipt of such notice the board shall place
33 the name of such person upon the nonpracticing list. While
34 remaining on this list the person shall not be subject to
35 the payment of any renewal fees and shall not practice
36 registered nursing in this state. When the person desires
37 to resume practice, application for renewal of license and
38 payment of the renewal fee for the current year shall be
39 made to the board.

CHAPTER 131

(House Bill No. 59—By Mr. Brotherton)

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be numbered article seven-a, relating to the licensure of practical nurses in the state of West Virginia.

[Passed February 26, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 7-a. Practical Nurses.

Section

1. Definition.
2. Who may practice.
3. Qualifications of applicants for license.
4. Application for license or registration; examination fee.
5. Board of examiners; powers; duties.
6. Examination and licensure of practical nurses; present practitioners.
7. Renewal or reinstatement of license.
8. Use of title "licensed practical nurse."
9. Schools of practical nursing.
10. Construction of article.
11. Disciplinary proceeding; grounds for discipline.
12. Penalties.
13. Severability.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be numbered article seven-a, to read as follows:

Section 1. *Definition.*—(a) The term “practical nurse”,
2 as used in this article, shall mean a person prepared by an
3 approved educational program to share in the care of the
4 sick, in rehabilitation and in prevention of illness, always
5 under the supervision of a licensed physician.

6 (b) The term “board” as used in this article shall mean
7 the board of examiners for practical nurses as set forth
8 in section five of this article.

Sec. 2. *Who May Practice.*—After the thirtieth day of
2 June, one thousand nine hundred fifty-eight, it shall be
3 unlawful for any person practicing or offering to practice
4 as a licensed practical nurse to use any title, figure, sign,
5 card or device to indicate such person is a licensed practi-
6 cal nurse unless such person has been duly qualified and
7 licensed under the provisions of this article.

Sec. 3. *Qualifications of Applicants for License.*—Except
2 as otherwise provided in section six of this article, any
3 person desiring to obtain a license to practice as a licensed
4 practical nurse shall submit to the board satisfactory evi-
5 dence that he or she: (a) Is of a good moral character;
6 (b) has completed at least the ninth grade of school or
7 its equivalent; (c) has completed a course of study in an
8 accredited school for practical nurses as defined by the
9 board and holds a diploma therefrom; and (d) has com-
10 pleted such other general educational requirements as
11 may be prescribed by the board.

Sec. 4. *Application for License or Registration; Exami-
2 nation Fee.*—The provisions of section six, article one,
3 chapter thirty of the code shall apply to this article,
4 except that an applicant for license as a practical nurse
5 shall pay a fee of fifteen dollars.

Sec. 5. *Board of Examiners; Powers; Duties.*—The
2 governor shall appoint, by and with the advice and con-

3 sent of the Senate, seven citizens of the state of West Vir-
4 ginia who shall constitute the "West Virginia State Board
5 of Examiners for Practical Nurses" and they shall be
6 charged with the duty of administering the provisions of
7 this article. Of the seven members so appointed two shall
8 be licensed practical nurses, except that in the initial
9 appointment, the two practical nurses shall be persons
10 eligible for licensure under the provisions of this article;
11 two shall be registered professional nurses duly licensed
12 in this state; two shall be doctors of medicine licensed in
13 this state; and one shall be a hospital administrator active-
14 ly engaged as such in this state. Such appointments shall
15 be for terms of five years each, except that in the initial
16 appointments, one person eligible for licensure as a
17 licensed practical nurse hereunder and one registered pro-
18 fessional nurse shall be appointed for terms of five years
19 each, one person eligible for licensure as a licensed practi-
20 cal nurse hereunder and one registered professional nurse
21 shall be appointed for terms of four years each, one doctor
22 of medicine shall be appointed for a term of three years,
23 one hospital administrator shall be appointed for a term
24 of two years, and one licensed doctor of medicine shall be
25 appointed for a term of one year. The practical nurses so
26 to be appointed, initially and subsequently, shall be select-
27 ed by the governor from a list to be submitted to him by
28 the practical nurses' association of West Virginia, inc.; the
29 registered professional nurses so to be appointed, initially
30 and subsequently, shall be selected by the governor from
31 a list to be submitted to him by the West Virginia state
32 nurses' association, inc.; the doctor of medicine so to be
33 appointed, initially and subsequently, shall be selected by
34 the governor from a list to be submitted to him by the
35 West Virginia state medical association; and the hospital
36 administrator so to be appointed, initially and subsequent-
37 ly, shall be selected by the governor from a list submitted
38 to him by the West Virginia hospital association: *Provided,*
39 *however,* That each of such lists shall contain the names of
40 at least three persons for each person so to be appointed.
41 Any member of the board may be eligible for reappoint-
42 ment, but no member shall serve longer than two suc-

42 cessive terms. The board is hereby authorized to appoint
44 and employ a qualified person to perform the duties of
45 executive secretary and to act as educational advisor to
46 the board. Such secretary shall act under the direction
47 of the board. The board shall furnish the secretary a head-
48 quarters and shall provide such office equipment and clerical
49 assistance as the duties of the office may require. The
50 board shall have power to appoint such nurses, deputies,
51 clerks, assistants, inspectors and employees as shall be
52 necessary for the proper exercise of the powers and duties
53 of the board. The compensation and expenses of the mem-
54 bers of the board and its appointees and employees shall
55 be paid out of such funds as are allocated to the board in
56 its annual budget. The secretary shall keep the records
57 of proceedings of the board, and shall keep a registry of
58 the names and addresses of all practical nurses registered
59 under this article, which registry shall be a public record.
60 Said board shall hold not less than two regular meetings
61 each year and such additional meetings at such times and
62 places as the board may determine. The board is author-
63 ized to adopt and, from time to time, to revise such rules
64 and regulations not inconsistent with this article, as may
65 be necessary to enable it to carry into effect the provisions
66 hereof. The board shall prescribe curricula and standards
67 for schools and courses preparing persons for licensure
68 under this article. It shall provide for surveys of such
69 schools and courses at such times as it may deem necessary.
70 It shall accredit such schools and courses as meet the re-
71 quirements of this article and of the board. It may evalu-
72 ate and approve courses for affiliation. It shall examine,
73 license and renew the license of duly qualified applicants.

Sec. 6. Examination and Licensure of Practical Nurses;
2 *Present Practitioners.*—The applicant, except as herein-
3 after provided, shall be required to pass a written exami-
4 nation in such subjects as the board shall determine. Each
5 written examination may be supplemented by such oral
6 or practical examination as the board may deem necessary.
7 The board shall determine the times and places for the
8 examination and notices thereof shall be published in two
9 newspapers of general circulation in the state. Notices of

10 examination shall be sent by mail to each person known
11 by the secretary to be an applicant for an examination or
12 registration at least thirty days previous to any such meet-
13 ing. Upon the applicant's successful completion of such
14 examination and satisfaction of the other requirements of
15 this article, the board shall issue to the applicant a license
16 to practice as a licensed practical nurse. The board shall
17 issue such license by endorsement to any applicant who
18 has been duly licensed or registered as such, or to a person
19 entitled to perform similar services under a different title,
20 in another state, territory or foreign country if, in the
21 opinion of the board, the applicant meets the other re-
22 quirements for licensed practical nurses in this state. On
23 or before the thirtieth day of June, one thousand nine
24 hundred fifty-nine, any practical nurse who has been
25 engaged in practical nursing in this state for a period of
26 three years, as verified by two doctors of medicine licensed
27 in this state having personal knowledge of the applicant's
28 qualifications, shall be issued a license by waiver by said
29 board.

30 Any person obtaining a license by waiver who has
31 completed extension courses equal in theory to those for
32 the graduate practical nurses, as determined by the board,
33 may at any time thereafter take the examination pre-
34 scribed by the board and obtain a license without the
35 designation of "waiver" thereon.

Sec. 7. *Renewal or Reinstatement of License.*—The
2 license of every person licensed under the provisions of
3 this article shall expire on the thirtieth day of June, next
4 following the date of license. In order for such license
5 to be renewed, the licensee shall comply with such rules
6 and regulations of the board as are applicable to renewals.
7 The renewal fee for all licenses shall be five dollars. Upon
8 receipt of the renewal fee the board shall issue to the
9 licensee a certificate of renewal for the current year, be-
10 ginning July first and expiring June thirtieth of the fol-
11 lowing year. Such certificate shall render the holder
12 thereof a legal practitioner for the period stated on the
13 certificate of renewal. Any licensee who allows his or her
14 license to lapse by failing to renew the license as pro-

15 vided above may be reinstated by the board on satisfac-
16 tory explanation for such failure to renew his or her
17 license and on payment of a reinstatement fee of five
18 dollars, in addition to the renewal fee of five dollars here-
19 inbefore set out. Any person practicing as a licensed prac-
20 tical nurse during the time his or her license has lapsed
21 shall be considered an illegal practitioner and shall be
22 subject to the penalties provided for violation of this ar-
23 ticle. A person licensed under the provisions of this article
24 desiring to retire from practice temporarily shall give
25 written notice of such desire to the board. Upon receipt
26 of such notice the board shall place the name of such
27 person upon the non-practicing list. While remaining on
28 this list the person shall not be subject to the payment of
29 any renewal fees and shall not practice as a licensed prac-
30 tical nurse in the state. When such person desires to re-
31 sume practice, application for renewal of license and pay-
32 ment of the renewal fee for the current year shall be made
33 to the board.

Sec. 8. *Use of Title "Licensed Practical Nurse".*—Any
2 person who holds a license to practice nursing as a
3 licensed practical nurse under the provisions of this ar-
4 ticle may use the title licensed practical nurse and the
5 abbreviation L. P. N. No other person shall assume such
6 title or use such abbreviation or any other words, letters,
7 figures, signs, or devices to indicate that the person using
8 the same is a licensed practical nurse.

Sec. 9. *Schools of Practical Nursing.*—The board shall
2 prescribe curricula and standards for schools and courses
3 preparing persons for licensure under this article; it shall
4 provide for surveys of such schools and courses at such
5 times as it may deem necessary. It shall accredit such
6 schools and courses as meet the requirements of this ar-
7 ticle and of the board. An institution desiring to conduct
8 a school of practical nursing to be accredited by the board
9 as such shall file an application therefor with the board,
10 together with the information required and a fee of ten
11 dollars. It shall submit satisfactory evidence that: (1) It
12 is prepared to give the course of instruction and practical
13 experience in practical nursing as prescribed in the cur-

14 rricula adopted by the board; and (2) it is prepared to
15 meet other standards established by this law and by the
16 board.

17 A survey of the institution or institutions, with which
18 the school is to be, or is, affiliated, shall be made by the
19 executive secretary of the board. The executive secretary
20 shall submit a written report of the survey to the board.
21 If, in the opinion of the board, the requirements for an
22 accredited school of practical nursing are met, it shall
23 approve the school as an accredited school of practical
24 nursing. From time to time as deemed necessary by the
25 board, it shall be the duty of the board, through its execu-
26 tive secretary, to survey all schools of practical nursing
27 in the state. Written reports of such surveys shall be
28 submitted to the board. If the board determines that any
29 accredited school of practical nursing is not maintaining
30 the standards required by the statutes and by the board,
31 notice thereof in writing specifying the defect or defects
32 shall be immediately given to the school. A school which
33 fails to correct these conditions to the satisfaction of the
34 board within a reasonable time shall be removed from the
35 list of accredited schools of practical nursing. Nothing
36 contained in this article shall infringe upon the rights or
37 power of the state board of education, or county boards
38 of education to establish and conduct a program of prac-
39 tical nurse education or other health occupation.

Sec. 10. *Construction of Article.*—The provisions of
2 this article shall not be construed as prohibiting:

- 3 (1) The care of a sick, disabled, injured, crippled or
4 infirm person by a member or members of such person's
5 family, or by close relatives, or by domestic servants,
6 housekeepers or household aides thereof, whether em-
7 ployed regularly or because of emergency circumstances
8 due to illness or other disabilities.
- 9 (2) The work and services of auxiliary hospital per-
10 sonnel, such as nursing aides, maids, orderlies, techni-
11 cians, volunteer workers and other like hospital em-
12 ployees.
- 13 (3) The domestic administration of family remedies.
- 14 (4) Practical nursing by students enrolled in accred-

15 ited schools for practical nursing incidental to their course
16 of study.

17 (5) Practice of nursing in this state by any legally
18 qualified practical nurse of another state or country whose
19 engagement requires such practical nurse to accompany
20 and care for a patient temporarily residing in this state
21 during the period of such engagement.

22 (6) Practical nursing by any person eligible for licen-
23 sure under the provisions of this article, whose application
24 for admission to a licensing examination has been ap-
25 proved by the board and who enters the first licensing ex-
26 amination scheduled by the board after filing such applica-
27 tion or has been granted leave by the board in writing to
28 enter upon a subsequent scheduled examination.

29 But no person, not licensed and authorized to engage
30 in practical nursing in this state, as provided in this arti-
31 cle, shall represent himself or herself to be, or shall accept
32 employment as, a licensed practical nurse in this state.

Sec. 11. *Disciplinary Proceeding; Grounds for Disci-*
2 *pline.*—The board shall have the right to refuse to admit
3 an applicant for the licensure examination for the here-
4 inafter stated reasons, and also the board shall have the
5 power to revoke or suspend any license to practice as a
6 licensed practical nurse issued by the board in accordance
7 with the provisions of this article, or to otherwise disci-
8 pline a licensee upon satisfactory proof that the person:
9 (1) Is guilty of fraud or deceit in procuring or attempting
10 to procure a license to practice nursing; or (2) is con-
11 victed of a felony; or (3) is habitually intemperate or
12 is addicted to the use of habit-forming drugs; or (4) is
13 unfit or incompetent by reason of negligence or habits;
14 or (5) is mentally incompetent; or (6) is guilty of con-
15 duct derogatory to the moral or standing of the occupa-
16 tion of practical nursing; or (7) who practices or attempts
17 to practice without a license or who wilfully or repeatedly
18 violates any of the provisions of this article.

Sec. 12. *Penalties.*—It shall be a misdemeanor for any
2 person, firm, corporation or association of persons to: (1)
3 Sell or fraudulently obtain or furnish any nursing diploma,

4 license or record or aid or abet therein; or (2) practice
5 as a licensed practical nurse under cover of any diploma,
6 license or record illegally or fraudulently obtained or
7 signed or issued unlawfully or under fraudulent repre-
8 sentation; or (3) practice as a licensed practical nurse
9 unless duly licensed to do so under the provisions of this
10 article; or (4) use in connection with his or her name
11 any designation tending to imply that he or she is a
12 licensed practical nurse unless duly licensed so to practice
13 under the provisions of this article; or (5) practice as a
14 licensed practical nurse during the time his or her license
15 issued under the provisions of this article shall be sus-
16 pended or revoked; or (6) conduct a school of practical
17 nursing or a course for training of practical nurses unless
18 the school or course has been accredited by the board;
19 or (7) otherwise violate any provisions of this article.
20 Any person convicted of any such misdemeanor shall
21 be punishable by a fine of not less than twenty-five nor
22 more than one hundred dollars.

Sec. 13. *Severability.*—If any provision of this article
2 or the application thereof to any person or circumstance
3 shall be held invalid, such invalidity shall not affect the
4 provisions or applications of this article which can be
5 given effect without the invalid provision or application,
6 and to this end the provisions of this article are declared
7 to be severable.

CHAPTER 132

(House Bill No. 270—By Miss Hallanan, by request)

AN ACT to amend and reenact sections three, four and six,
article eleven, chapter thirty of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relat-
ing to chiropradists.

[Passed March 7, 1957; in effect ninety days from passage. Approved by the
Governor.]

Article 11. Chiropodists.**Section**

3. Qualifications of applicant for license.
4. Examination for license; issuance of license.
6. Limitations of article.

Be it enacted by the Legislature of West Virginia:

That sections three, four and six, article eleven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. *Qualifications of Applicant for License.*—An
2 applicant for license shall furnish to the medical licensing
3 board satisfactory proof that he is: (a) Twenty-one years
4 of age or over; (b) of good moral character; (c) a gradu-
5 ate of a school of chiropody registered by the state de-
6 partment of education as being of proper standard, or that
7 he has been in the practice of chiropody in some other
8 state for at least five years, and of good standing in such
9 state, in which said state an examination is required by
10 law equal to the requirements of this state, and that said
11 applicant has taken the examination in said state and
12 received a license therein; (d) possessed of a minimum
13 education of graduation from a high school recognized by
14 the state department of education as being a proper
15 standard and at least two years of academic work of col-
16 legiate grade in a standard college of arts and sciences,
17 so recognized as being a proper standard by the state de-
18 partment of education; (e) a bona fide resident of the
19 state of West Virginia at the time of application.

Sec. 4. *Examination for License; Issuance of License.*—
2 The medical licensing board shall conduct examinations
3 for license to practice chiropody at the times and places
4 designated by it for conducting examinations for licenses
5 to practice medicine. Examinations shall be in English,
6 and in writing, and shall be of a scientific and practical
7 character. They shall cover the subjects of general and
8 special anatomy, physiology, hygiene and sanitation,
9 physics, chemistry, biology, embryology, histology, pa-
10 thology, physical therapy, bacteriology, minor surgery,

11 materia medica and thereapeutics, foot orthopedics and
12 surgery, dermatology, and syphilology, roentgenology,
13 physical diagnosis, didactic and clinical chiropody. The
14 medical licensing board shall issue licenses to practice
15 chiropody to successful applicants therefor after proper
16 certificate has been presented certifying that the applicant
17 after graduation has completed an internship of one year
18 in a recognized school of chiropody.

Sec. 6. *Limitations of Article.*—Nothing contained in
2 this article shall be construed to prevent a registered prac-
3 titioner of medicine in the state of West Virginia from
4 practicing chiropody as a branch of his medical and sur-
5 gical practice, physicians and surgeons of the United
6 States of army, navy or marine hospital service in actual
7 discharge of their duties as such; nor to chiropodists living
8 in other states and duly qualified to practice chiropody
9 therein who shall be called in consultation into this state
10 by a chiropodist already entitled to practice chiropody
11 in this state.

CHAPTER 133

(House Bill No. 120—By Mr. Myles)

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article seventeen, relating to the registration of sanitarians in this state, prohibiting certain acts by unregistered sanitarians, and providing penalties therefor.

[Passed March 5, 1937; in effect ninety days from passage. Approved by the Governor.]

Article 17. Sanitarians.

Section

1. Sanitarian defined.
2. Board of sanitarians.
3. Registration of sanitarians required.
4. Application for registration; fees.

5. Eligibility and qualifications for registration.
6. Annual renewal of registration; fees.
7. Revocation of registration.
8. Offenses; penalty; injunctive relief.
9. Reciprocity.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be designated article seventeen, to read as follows:

Section 1. *Sanitarian Defined.*—As used in this article
2 “sanitarian” means a person trained in the field of sanitary
3 science and technology who is qualified to carry out edu-
4 cational and inspectional duties in the field of industrial
5 sanitation, or who, under the direction of an organized
6 public health department, is qualified to assist in the
7 enforcement of the laws and regulations in the field of
8 environmental sanitation as it relates to the public health.

Sec. 2. *Board of Sanitarians.*—There is hereby estab-
2 lished a state board for the examination and registration
3 of professional sanitarians, to be known as the “West
4 Virginia Board of Sanitarians”. The board shall consist
5 of the state director of health, who shall be a member
6 ex officio and secretary of the board, and four professional
7 sanitarians, to be appointed by the governor, by and with
8 the advice and consent of the senate, at least one of whom
9 shall be employed in the field of industrial sanitation.
10 Each member appointed by the governor shall have been
11 engaged in active practice as a professional sanitarian
12 in this state for at least five years prior to his appointment,
13 and, except in the case of the original members of the
14 board, shall have been registered in this state as a pro-
15 fessional sanitarian as provided in this article. On or
16 before the first day of July, one thousand nine hundred
17 fifty-seven, the governor shall name the four original
18 appointive members for terms of one, two, three and four
19 years, respectively, beginning on that date. Thereafter,
20 each appointment shall be for a term of four years, except
21 that an appointment to fill a vacancy shall be for the
22 unexpired term.

23 All expenses of the board shall be paid solely from
24 registration fees and renewal fees collected as provided in
25 this article.

Sec. 3. *Registration of Sanitarians Required.*—On and
2 after the first day of September, one thousand nine hun-
3 dred fifty-seven, no person shall perform or offer to per-
4 form the duties of a professional sanitarian in this state
5 without first applying for and obtaining from the West
6 Virginia Board of Sanitarians a certificate of registration
7 as a professional sanitarian or as an apprentice sanitarian.

Sec. 4. *Application for Registration; Fees.*—The board
2 shall prescribe and furnish an application form for the
3 use of persons applying for registration. The registration
4 fee shall be ten dollars, five dollars of which shall accom-
5 pany the application, the remaining five dollars to be paid
6 upon issuance of the certificate of registration. Should
7 the board deny the issuance of a certificate to any appli-
8 cant, the initial fee deposited shall be retained as a fee for
9 the processing and evaluation of his application.

Sec. 5. *Eligibility and Qualifications for Registration.*—
2 The board shall accept for review the application of any
3 person twenty-one years of age or more whose application
4 is submitted with the necessary fee.

5 The board shall issue a certificate of registration as a
6 professional sanitarian, together with a numbered identi-
7 fication card, to any applicant of good moral character:

8 (1) Who held a position as a professional sanitarian in
9 this state for a period of not less than six months prior
10 to the first day of July, one thousand nine hundred fifty-
11 seven, such position having been earned as a result of
12 successfully passing a merit system or civil service exami-
13 nation given under the authority of this state, or having
14 been awarded on the basis of comparable standards in
15 industry, if application for registration under this sub-
16 section is filed with the board not more than sixty days
17 after such date; or

18 (2) Who shall hereafter qualify for and successfully
19 pass such a merit system or civil service examination,
20 and who has satisfactorily completed a six-month pro-

21 bationary period of employment as a sanitarian prior to
22 the date of his application; or

23 (3) Who is a graduate of a college or university, duly
24 accredited by the proper regional accrediting agency or
25 by the West Virginia state board of education, who has
26 credit for not less than thirty semester or forty-five quarter
27 hours of work in the physical, biological, social and sani-
28 tary sciences; or

29 (4) Who has credit for not less than three full years of
30 academic work at a college or university, duly accredited
31 by the proper regional accrediting agency or by the West
32 Virginia state board of education, including credit for
33 not less than twenty semester or thirty quarter hours of
34 work in the physical, biological, social and sanitary sci-
35 ences, and who has satisfactorily completed a six-month
36 probationary period of employment as a sanitarian prior
37 to the date of his application; or

38 (5) Who has credit for not less than two full years of
39 academic work at a college or university, duly accredited
40 by the proper regional accrediting agency or by the West
41 Virginia state board of education, including credit for
42 not less than ten semester or fifteen quarter hours of
43 work in the physical, biological, social and sanitary sci-
44 ences, and who has satisfactorily completed a six-month
45 probationary period of employment as a sanitarian prior
46 to the date of his application.

47 Any person who meets all qualifications for registration
48 as a professional sanitarian, except the experience re-
49 quirements, may upon making application and paying
50 a total fee of ten dollars be granted a temporary certifi-
51 cate of registration as an apprentice sanitarian. Such
52 temporary registration shall, unless sooner revoked for
53 cause, remain in effect for a period not to exceed one
54 year, and upon payment of the required fee may be
55 renewed annually for a period not to exceed two addi-
56 tional years.

Sec. 6. *Annual Renewal of Registration; Fees.*—Every
2 registered professional sanitarian who desires to continue
3 in active practice or service shall renew his registration

4 on or before the first day of July of each year. Upon pay-
5 ment by the registrant of an annual renewal fee of five
6 dollars, or a fee of ten dollars in the case of a late renewal,
7 the board shall issue a new certificate of registration,
8 together with a current identification card with the same
9 number that was assigned to him at the time of his
10 original registration. A registered sanitarian whose certi-
11 ficate of registration has expired may have the same re-
12 newed only upon payment of all lapsed renewal fees.

Sec. 7. *Revocation of Registration.*—In a proceeding,
2 instituted and conducted as provided in section eight,
3 article one of this chapter, for the revocation of any certifi-
4 cate of registration issued by the board of sanitarians,
5 the board shall have the power to revoke the registration
6 if it finds that the holder thereof is guilty of any one or
7 more of the following:

8 (1) The practice of fraud or deceit in obtaining the
9 certificate of registration.

10 (2) Gross neglect of duty or gross incompetence in the
11 practice of industrial or environmental sanitation, or mal-
12 feasance or misfeasance in office.

13 (3) Any criminal, infamous, dishonest, immoral, or
14 notoriously disgraceful conduct, habitual use of intoxi-
15 cants to excess, drug addiction, or sexual perversion.

16 (4) Any acts which furnish reasonable grounds for
17 belief by the board that the holder of the certificate may
18 be subjected to coercion, influence or pressure which may
19 cause him to act contrary to the best interests of the pro-
20 fession.

Sec. 8. *Offenses; Penalty; Injunctive Relief.*—It shall be
2 unlawful for any person to represent himself as a regis-
3 tered professional sanitarian or a registered apprentice
4 sanitarian, or to perform the duties of a registered pro-
5 fessional sanitarian or a registered apprentice sanitarian,
6 unless he holds an unexpired certificate of registration
7 therefor issued by the board as provided in this article.
8 Any person who violates the provisions of this section
9 shall be guilty of a misdemeanor, and upon conviction
10 thereof shall be punished by a fine of not less than twenty-

11 five dollars nor more than one hundred dollars. Justices
12 of the peace shall have concurrent jurisdiction of cases
13 for the violation of the provisions of this section.

14 In addition, the board is authorized and empowered to
15 apply to any court having equity powers, or to the judge
16 thereof in vacation, for an injunction to restrain any
17 violation of the provisions of this section.

Sec. 9. *Reciprocity.*—Any person who is registered as
2 a professional sanitarian in any other state, in which the
3 qualifications for registration are not lower than the quali-
4 fications set forth in this article, shall upon application
5 and payment of the necessary fees be accepted for regis-
6 tration in this state.

CHAPTER 134

(Senate Bill No. 11—By Mr. Bowers and Mr. Taylor)

AN ACT to amend and reenact section sixteen, article eleven, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the lists and records of the department of public assistance as public records, and to the misuse of such lists and records.

[Passed February 5, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 11. General Provisions.

Section

16. Public assistance lists and records.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article eleven, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 16. *Public Assistance Lists and Records.*—The
2 department of public assistance shall make available for

3 public inspection by the tenth of each month a separate
4 alphabetical list of the names and addresses of all per-
5 sons receiving any form of relief assistance during the
6 preceding month together with the amounts of such
7 relief assistance. This information shall be delivered to
8 the clerk of each county court in the state who shall
9 immediately file the same in his office with respect to per-
10 sons receiving such assistance as residents of that county.
11 Such information shall be retained in the files of said
12 clerks of the county courts for a period of two years from
13 the date of receipt thereof. All information other than
14 names, addresses and amounts of such relief assistance
15 shall be considered as confidential.

16 It shall be unlawful, for commercial or political purposes
17 of any nature, for any person or persons, body, associa-
18 tion, firm, corporation or other agency to solicit, disclose,
19 receive, make use of, or to authorize, knowingly permit,
20 participate in, or acquiesce in the use of, any lists of
21 names of, or any information concerning, persons applying
22 for or receiving relief assistance, directly or indirectly
23 derived from the records, papers, files, or communica-
24 tions of the department of public assistance or acquired
25 in the course of performance of official duties. The viola-
26 tion of this provision is a misdemeanor, punishable upon
27 conviction by a fine of not more than one thousand dollars
28 or imprisonment of not more than six months, or both.

29 For the protection of applicants and recipients of relief
30 assistance, the department of public assistance shall be
31 required to establish reasonable rules and regulations
32 governing the custody, use, and preservation of the
33 records, papers, files and communications of the depart-
34 ment.

CHAPTER 135

(Senate Bill No. 185—By Mr. Bean, Mr. President)

AN ACT to amend and reenact section ten, article one, chap-
ter sixteen of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to supervision of state health institutions by the state department of health.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 1. State Department of Health.

Section

10. Supervision of state health institutions.

Be it enacted by the Legislature of West Virginia:

That section ten, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 10. *Supervision of State Health Institutions.*—

2 The state department of health shall have the advisory
3 medical supervision of Denmar, Berkeley Springs, Pine-
4 crest, Hopemont and all other state sanitoriums for the
5 treatment of tuberculous or chronic diseases; and Fair-
6 mont and Welch emergency hospitals; and the state board
7 of control shall have the control of the business and fiscal
8 affairs thereof.

9 The director of the bureau of tuberculosis of the state
10 department of health, under the supervision of the state
11 board of health, shall encourage measures for the sup-
12 pression of tuberculosis, such as clinics, camps, open-air
13 schools, sanitariums, district nursing, anti-tuberculosis
14 societies, diffusion of knowledge, and other means.

CHAPTER 136

(House Bill No. 117—By Mr. Booth)

AN ACT to amend and reenact section six, article eight-a, chapter sixteen of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to prescriptions for narcotic drugs and compounds.

[Passed February 13, 1957; in effect from passage. Approved by the Governor.]

Article 8-a. Narcotic Drugs.

Section

6. Sales by pharmacists upon prescriptions or by legal owner discontinuing business; solutions containing narcotic drugs.

Be it enacted by the Legislature of West Virginia:

That section six, article eight-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Section 6. *Sales by Pharmacists upon Prescriptions or by Legal Owner Discontinuing Business; Solutions Containing Narcotic Drugs.*—(1) A pharmacist, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist, or veterinarian: *Provided*, That such prescription is properly executed, dated and signed by the person prescribing on the day when issued, and bearing the full name and address of the patient for whom, or of the owner of the animal for which the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws, of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of five years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this article. The prescription shall not be refilled.

In lieu of a written prescription for such narcotic drugs or compounds of a narcotic drug which the secretary of

25 the treasury of the United States shall find and by regu-
26 lation designate to possess relatively little or no addiction
27 liability, a pharmacist may sell or dispense such drugs to
28 a consumer upon the oral prescription of a physician,
29 dentist or veterinarian, which oral prescription shall be
30 reduced promptly to writing and the writing filed and
31 preserved by the pharmacist for a period of five years
32 from the date on which such prescription is filled in such
33 a way as to be readily accessible to inspection by any
34 public officer or employee engaged in the enforcement of
35 this act. In issuing an oral prescription, the prescriber
36 shall furnish the pharmacist with the same information
37 as is required by law or regulation in case of a written
38 prescription for narcotic drugs or compounds of a narcotic
39 drug except for the written signature of the prescriber,
40 and the pharmacist who fills such prescription shall be
41 required to inscribe such information on the written record
42 of the prescription made, filed and preserved by him, and
43 shall inscribe on the label of the container of the narcotic
44 drug or compound of a narcotic drug the same information
45 as is required in filling a written prescription. An oral
46 prescription shall not be refilled.

47 If the secretary of the treasury of the United States
48 shall subsequently determine that a narcotic drug or a
49 compound of a narcotic drug, to which the oral prescrip-
50 tion procedure has been made applicable, possesses a
51 degree of drug addiction liability that results in abusive
52 use of such procedure, the oral prescription procedure
53 shall cease to apply to the particular narcotic drug or to
54 the particular compound of a narcotic drug after the
55 expiration of a period of six months from the date of pub-
56 lication in the federal register.

57 (2) The legal owner of any stock of narcotic drugs in a
58 pharmacy, upon discontinuance of dealing in said drugs,
59 may sell said stock to a manufacturer, wholesaler, phar-
60 macist or pharmacy owner, but only on an official written
61 order.

62 (3) A pharmacist, only upon an official written order,
63 may sell to a physician, dentist or veterinarian, in quanti-
64 ties not exceeding one ounce at any one time, aqueous or

65 oleaginous solutions of which the content of narcotic drug
66 does not exceed a proportion greater than twenty per cent
67 of the complete solution, to be used for legitimate office
68 practice. The original order form must be filed by the
69 pharmacist with his narcotic prescriptions. Each package
70 containing an aqueous or oleaginous solution so furnished
71 must bear a label showing the date and number of the
72 order form, the name and proportion of narcotic drug
73 contained in the solution, the name, address, and registry
74 number of the person furnishing the order, and the name,
75 address, and registry number of the pharmacist or phar-
76 macy owner filling the order.

CHAPTER 137

(House Bill No. 258—By Mr. Clark)

AN ACT to amend and reenact section eighteen, article thirteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to members of sanitary boards.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 13. Sewage Works of Municipal Corporations and Sanitary Districts.

Section

18. Supervision of sanitary board; qualifications, etc., of members; organization and compensation.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article thirteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 18. *Supervision of Sanitary Board; Qualifications, etc., of Members; Organization and Compensation.—*

3 The governing body shall provide by ordinance that the
4 custody, administration, operation and maintenance of
5 such works shall be under the supervision and control of
6 a sanitary board, created as herein provided. Such sani-
7 tary board shall be composed of either the mayor of the
8 municipality, or the city manager thereof, if said munici-
9 pality shall have a city manager form of government, and
10 two persons appointed by the governing body, one of
11 whom, during the construction period, must be a registered
12 professional engineer. The engineer member of the board
13 need not be a resident of said municipality. After the con-
14 struction of the plant has been completed, the engineer
15 member may be succeeded by a person not an engineer.
16 No officer or employee of the municipality, whether hold-
17 ing a paid or unpaid office, shall be eligible to appointment
18 on said sanitary board until at least one year after the ex-
19 piration of the term of his public office. Said appointees
20 shall originally be appointed for terms of two and three
21 years respectively, and upon the expiration of each such
22 term and each succeeding term, an appointment of a suc-
23 cessor shall be made in like manner for a term of three
24 years. Vacancies shall be filled for an unexpired term in
25 the same manner as the original appointment. Each mem-
26 ber shall give such bond, if any, as may be required by
27 ordinance. Such mayor or city manager shall act as chair-
28 man of the sanitary board, which shall elect a vice chair-
29 man from its members and shall designate a secretary and
30 treasurer (but the secretary and the treasurer may be one
31 and the same), who need not be a member or members of
32 the sanitary board. The vice chairman, secretary and
33 treasurer shall hold office as such at the will of the sani-
34 tary board. The members of the sanitary board shall
35 receive such compensation for their services, either as a
36 salary or as payments for meetings attended, as the gov-
37 erning body may determine, and shall be entitled to pay-
38 ment for their reasonable expenses incurred in the per-
39 formance of their duties. The governing body shall fix the
40 reasonable compensation of the secretary and treasurer in
41 its discretion, and shall fix the amounts of bond to be
42 given by the treasurer. All compensation, together with
43 the expenses in this section referred to, shall be paid solely

44 from funds provided under the authority of this article.
45 The sanitary board shall have power to establish by-laws,
46 rules and regulations for its own government.

CHAPTER 138

(House Bill No. 95—By Mr. Caldwell)

AN ACT to amend article thirteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a, relating to publication of financial statement by sanitary board.

[Passed March 1, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 13. Sewage Works of Municipal Corporations and Sanitary Districts.

Section

18-a. Publication of financial statement.

Be it enacted by the Legislature of West Virginia:

That article thirteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eighteen-a, to read as follows:

Section 18-a. *Publication of Financial Statement.*—

2 Every sanitary board shall prepare and cause to be pub-
3 lished, one time, in two newspapers of opposite politics,
4 if there be such published or circulated in the sanitary
5 district, or if no such paper be published or circulated
6 therein, (or if no such paper will publish the same for
7 the price fixed by law therefor), the same shall be posted
8 in the offices of the sanitary board and at a public place
9 in each city hall or municipal building in the district. Such
10 statement shall contain an itemized account of the receipts
11 and expenditures of the board during the previous fiscal

12 year, showing the source from which all money was de-
13 rived, and the name of the person to whom an order was
14 issued, together with the amount of such order, and why
15 such order was issued, arranging the same under distinct
16 heads, and including all money received and expended
17 from the sale of bonds, and also a specific statement of
18 the debts of such board, showing the purpose for which
19 any debt was contracted, the amount of money in all
20 funds at the end of the preceding year, and the amount
21 of uncollected service charges. Such statement shall be
22 prepared and published by the board as soon as practicable
23 after the close of the fiscal year: *Provided*, That such
24 statement for the fiscal year ending June thirtieth, one
25 thousand nine hundred fifty-six, may be published any
26 time during the year one thousand nine hundred fifty-
27 seven. The statement shall be sworn to by the chairman
28 and secretary and treasurer of the board. If a board fails
29 or refuses to perform the duties hereinbefore named,
30 every member of the board concurring in such failure or
31 refusal shall be guilty of a misdemeanor, and, upon con-
32 viction thereof, shall be fined not less than one hundred
33 nor more than five hundred dollars, and the circuit court
34 or criminal court and justices of the peace, of the county
35 where the offense was committed, shall have concurrent
36 jurisdiction to try such offense.

CHAPTER 139

(House Bill No. 106—By Mr. Hubbard and Mr. Parker)

AN ACT to amend and reenact sections one and four, article eighteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend article eighteen of said chapter by adding thereto six new sections, to be designated sections twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, all relating to urban renewal.

[Passed February 11, 1957; in effect from passage. Approved by the Governor.]

Article 18. Slum Clearance.

Section

1. Short title.
4. Creation of urban renewal authority.
24. Findings.
25. Urban renewal projects.
26. Urban renewal plan.
27. Powers with respect to urban renewal.
28. Assistance to urban renewal by communities and other public bodies.
29. Workable program.

Be it enacted by the Legislature of West Virginia:

That sections one and four, article eighteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that article eighteen of said chapter be amended by adding thereto six new sections, to be designated sections twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine, all to read as follows:

Section 1. *Short Title.*—This article shall be known and may be cited as the “Urban Renewal Authority Law”.

Sec. 4. *Creation of Urban Renewal Authority.*—(a)
 2 There is hereby created in each community (as herein
 3 defined) a public body corporate and politic, to be known
 4 as the “Urban Renewal Authority” of the community:
 5 *Provided, however,* That such authority shall not transact
 6 any business or exercise its powers hereunder until or
 7 unless the governing body shall approve, (by resolution,
 8 as herein provided) the exercise in such community of
 9 the powers, functions and duties of an authority under this
 10 article: *Provided further,* That, if it deems such action to
 11 be in the public interest, the governing body may, instead
 12 of such resolution, adopt a resolution approving the exer-
 13 cise of such powers, functions and duties by the com-
 14 munity itself or by the housing authority, if one exists or
 15 is subsequently established in the community, and in such
 16 event, the community or housing authority, as the case
 17 may be, shall be vested with all the powers, functions,
 18 rights, duties and privileges of an urban renewal and re-
 19 development authority under this article.

20 (b) The governing body of a community shall not adopt

21 a resolution pursuant to subsection (a) above unless it
22 finds:

23 (1) That one or more slum or blighted areas (as herein
24 defined) exist in such community, and

25 (2) That the redevelopment of such area or areas is
26 necessary in the interest of the public health, safety,
27 morals or welfare of the residents of such community.

28 (c) If the governing body of each of two or more com-
29 munities declares, by resolution, that there is a need for
30 one urban renewal and redevelopment authority to be
31 created for all of such communities, and has made the
32 findings required by paragraph (b), a public body, corpor-
33 ate and politic, to be known as a regional slum clearance
34 and redevelopment authority (herein referred to as re-
35 gional authority or authority) shall thereupon exist for
36 all of such communities and may exercise the powers and
37 other functions of an authority under this article in such
38 communities.

39 (d) The area of operation of a regional authority shall
40 be increased from time to time to include one or more
41 additional communities if the governing body of each of
42 such additional communities adopts the resolution describ-
43 ed in paragraph (c) and makes the findings required by
44 paragraph (b), and the commissioners of the regional
45 authority consent to the inclusion within its area of oper-
46 ation of such additional communities.

47 (e) When the governing body of a municipality adopts
48 a resolution as aforesaid, it shall promptly notify the
49 mayor of such adoption. If the resolution adopted is one
50 approving the exercise of powers hereunder by an urban
51 renewal and redevelopment authority, the mayor, by
52 and with the advice and consent of the governing body
53 shall appoint a board of commissioners of the authority
54 created for such municipality which shall consist of no
55 less than five commissioners nor more than seven, and
56 when the governing body of a county adopts such a reso-
57 lution, said body shall appoint a board of commissioners
58 of the authority created for such county which shall con-
59 sist of no less than five commissioners nor more than seven.
60 The commissioners who are first appointed pursuant to

61 this article shall be designated to serve for terms of one,
62 two, three and four years, and three of said commissioners
63 for five years, respectively, from the date of their appoint-
64 ment, but thereafter commissioners shall be appointed as
65 aforesaid for a term of office of five years except that all
66 vacancies shall be filled for the unexpired term.

67 (f) If a regional authority is created as herein provided,
68 one person shall be appointed as a commissioner of such
69 authority for each community for which such authority
70 is created. When the area of operation of a regional
71 authority is increased to include an additional community
72 or communities as herein provided, one additional person
73 shall be appointed as a commissioner of such authority
74 for each such additional community. Each such com-
75 missioner appointed for a municipality shall be appointed
76 by the mayor thereof, by and with the advice and consent
77 of the governing body, and each such commissioner ap-
78 pointed for a county shall be appointed by the governing
79 body thereof. The first appointment of commissioner of a
80 regional authority may be made at or after the time of the
81 adoption of the resolution declaring the need for such
82 authority or declaring the need for the inclusion of such
83 community in the area of operation of such authority.
84 The commissioners of a regional authority and their suc-
85 cessors shall be appointed as aforesaid for terms of five
86 years except that all vacancies shall be filled for the unex-
87 pired terms.

88 If the area of operation of a regional authority consists
89 at any time of an even number of communities, the com-
90 missioners of the regional authority already appointed in
91 the manner described above shall appoint the additional
92 commissioner whose term of office shall be as provided
93 for a commissioner of a regional authority except that
94 such terms shall end at any earlier time that the area of
95 operation of the regional authority shall be changed to
96 consist of an odd number of communities. The commis-
97 sioners of such authority already appointed in the manner
98 described above shall likewise appoint each person to
99 succeed such additional commissioner: *Provided*, That the
100 term of office of such person begins during the terms of

101 office of the commissioners appointing him. A certificate
102 of the appointment of any such additional commissioner
103 of such regional authority shall be filed with the other
104 records of the regional authority and shall be conclusive
105 evidence of the due and proper appointment of such
106 additional commissioner.

107 (g) A commissioner of an authority shall receive no
108 compensation for his services, but shall be entitled to the
109 necessary expenses, including traveling expenses, in-
110 curred in the discharge of his duties. Each commissioner
111 shall hold office until his successor has been appointed and
112 has qualified. A certificate of the appointment or reap-
113 pointment of any commissioner shall be filed with the
114 municipal or county clerk, as the case may be, and such
115 certificate shall be conclusive evidence of the due and
116 proper appointment of such commissioner.

117 The powers hereunder vested in each urban renewal
118 and redevelopment authority shall be exercised by the
119 board of commissioners thereof. A majority of the com-
120 missioners shall constitute a quorum of such board for the
121 purpose of conducting business and exercising the powers
122 of the authority and for all other purposes. Action may
123 be taken by the board upon a vote of a majority of the
124 commisioners present, unless in any case the by-laws of
125 the authority shall require a larger number. Meetings
126 of the board of an authority may be held anywhere within
127 the perimeter boundaries of the area of operation of the
128 authority. Any persons may be appointed as commis-
129 sioners of the authority if they reside within such area,
130 and are otherwise eligible for such appointments under
131 this article.

132 The commissioners of an authority shall elect a chair-
133 man and vice chairman from among the commissioners.
134 An authority may employ an executive director, technical
135 experts and such other officers, agents and employees,
136 permanent and temporary, as it may require, and shall
137 determine their qualifications, duties and compensation.
138 For such legal services as it may require, an authority
139 may, with the approval of the mayor (or of the governing
140 body in the case of a county), call upon the chief law

141 officer of the communities within its area of operation or
142 it may employ its own counsel and legal staff. An authori-
143 ty may delegate to one or more of its agents or employees
144 such powers or duties as it may deem proper.

145 (h) For inefficiency or neglect of duty or misconduct
146 in office, a commissioner of an authority may be removed
147 by the official or public body which appointed such com-
148 missioner, but a commissioner shall be removed only after
149 a hearing and after he shall have been given a copy
150 of the charges at least ten days prior to such hearing and
151 has had an opportunity to be heard in person or by
152 counsel. In the event of the removal of any commissioner,
153 a record of the proceedings, together with the charges and
154 findings thereof, shall be filed in the office of the municipal
155 or county clerk, as the case may be.

156 (i) In any suit, action or proceeding involving the
157 validity of enforcement of or relating to any contract of or
158 bonds issued by an authority, the authority shall be con-
159 clusively deemed to have become established and authori-
160 zed to transact business and exercise its powers hereunder
161 upon proof of the adoption of the appropriate resolution
162 prescribed in subsection (a) or (c) above. Each such
163 resolution shall be deemed sufficient if it authorizes the
164 exercise of powers hereunder by the authority or other
165 public body and finds in substantially the terms provided
166 in subsection (b) (no further details being necessary)
167 that the conditions therein enumerated exist. A copy of
168 such resolution duly certified by the municipal or county
169 clerk, as the case may be, shall be admissible in evidence
170 in any suit, action or proceeding.

171 (j) No commissioner or employee of an authority shall
172 voluntarily acquire any interest, direct or indirect, in any
173 redevelopment project or in any property included or
174 planned by the authority to be included in any such
175 project, or in any contract or proposed contract in con-
176 nection with any such project. Where the acquisition is
177 not voluntary such commissioner or employee shall im-
178 mediately disclose such interest in writing to the authority
179 and such disclosure shall be entered upon the minutes of
180 the authority. A commissioner or employee who owns or

181 controls any interest direct or indirect, in such property
182 shall not participate in any action by the authority affect-
183 ing the property. If any commissioner or employee of an
184 authority owned or controlled within the preceding two
185 years an interest, direct or indirect, in any property in-
186 cluded or planned by the authority to be included in any
187 redevelopment project, he immediately shall disclose such
188 interest in writing to the authority and such disclosure
189 shall be entered upon the minutes of the authority. Upon
190 such disclosure such commissioner or employee shall not
191 participate in any action by the authority affecting such
192 property. Any violation of the provisions of this section
193 shall constitute misconduct in office.

Sec. 24. *Additional Findings.*—It is hereby found and
2 declared that (a) there exist in communities of this state
3 slum, blighted, and deteriorated areas which constitute a
4 serious and growing menace, injurious to the public
5 health, safety, morals and welfare of the residents of the
6 state, and the findings and declarations heretofore made
7 in this article with respect to slum and blighted areas are
8 hereby affirmed and restated, (b) certain slum, blighted,
9 or deteriorated areas, or portions thereof, may require ac-
10 quisition and clearance, as provided in this article, since
11 the prevailing condition of decay may make impracticable
12 the reclamation of the area by conservation or rehabilita-
13 tion, but other areas or portions thereof may, through the
14 means provided in this article, as amended, be susceptible
15 of conservation or rehabilitation in such a manner that
16 the conditions and evils hereinbefore enumerated may be
17 eliminated, remedied or prevented, and that salvable slum
18 and blighted areas can be conserved and rehabilitated
19 through appropriate public action and the cooperation and
20 voluntary action of the owners and tenants of property
21 in such areas, and (c) all powers conferred by this ar-
22 ticle, as amended, are for public uses and purposes for
23 which public money may be expended and such other
24 powers exercised, and the necessity in the public interest
25 for the provisions of this article, as amended, is hereby
26 declared as a matter of legislative determination. A com-
27 munity, to the greatest extent it determines to be feasible

28 in carrying out the provisions of this article, as amended,
29 shall afford maximum opportunity, consistent with the
30 sound needs of the community as a whole, to the rehabili-
31 tation or redevelopment of areas by private enterprise.

Sec. 25. *Urban Renewal Projects.*—In addition to its
2 authority under any other section of this article, an au-
3 thority is hereby authorized to plan and undertake urban
4 renewal projects. As used in this article, an urban re-
5 newal project may include undertakings and activities
6 for the elimination (and for the prevention of the devel-
7 opment or spread) of slums or blighted, deteriorated, or
8 deteriorating areas and may involve any work or under-
9 taking for such purpose constituting a redevelopment
10 project or any rehabilitation or conservation work, or
11 any combination of such undertaking or work. Such un-
12 dertaking and work may include (1) carrying out plans
13 for a program of voluntary or compulsory repair and
14 rehabilitation of buildings or other improvements; (2) ac-
15 quisition of real property and demolition, removal, or re-
16 habilitation of buildings and improvements thereon where
17 necessary to eliminate unhealthful, insanitary or unsafe
18 conditions, lessen density, reduce traffic hazards, elimi-
19 nate obsolete or other uses detrimental to the public wel-
20 fare, or to otherwise remove or prevent the spread of
21 blight or deterioration, or to provide land for needed
22 public facilities; (3) installation, construction, or recon-
23 struction of streets, utilities, parks, playgrounds, and other
24 improvements necessary for carrying out the objectives
25 of the urban renewal project; and (4) the disposition, for
26 uses in accordance with the objectives of the urban re-
27 newal project, of any property or part thereof acquired
28 in the area of such project: *Provided*, That such disposi-
29 tion shall be in the manner prescribed in this article for
30 the disposition of property in a redevelopment project
31 area.

32 Notwithstanding any other provisions of this article,
33 where the local governing body certifies that an area
34 is in need of redevelopment or rehabilitation as a re-
35 sult of a flood, fire, hurricane, earthquake, storm or other
36 catastrophe respecting which the governor of the state

37 has certified the need for disaster assistance under Public
38 Law 875, Eighty-first Congress, or other federal law, the
39 local governing body may approve an urban renewal plan
40 and an urban renewal project with respect to such area
41 without regard to any provisions of this article requiring
42 public hearings or requiring that the urban renewal plan
43 conform to a general plan for the community as a whole,
44 or that the urban renewal area be a slum area, or a
45 blighted, deteriorated, or deteriorating area, or that the
46 urban renewal area be predominantly residential in char-
47 acter or be developed or redeveloped for residential uses.

Sec. 26. *Urban Renewal Plan.*—Any urban renewal
2 project undertaken pursuant to the preceding section shall
3 be undertaken in accordance with an urban renewal plan
4 for the area of the project. As used in this article, an
5 “urban renewal plan” means a plan, as it exists from time
6 to time, for an urban renewal project, which plan (1)
7 shall conform to the general plan for the community as
8 a whole, except as provided for disaster areas, and (2)
9 shall be sufficiently complete to indicate such land ac-
10 quisition, demolition and removal of structures, redevelop-
11 ment, improvements, and rehabilitation as may be pro-
12 posed to be carried out in the area of the urban renewal
13 project, zoning and planning changes, if any, land uses,
14 maximum densities, building requirements, and the plan’s
15 relationship to definite local objectives representing ap-
16 propriate land uses, improved traffic, public transporta-
17 tion, public utilities, recreational and community facili-
18 ties, and other public improvements. An urban renewal
19 plan shall be prepared and approved pursuant to the same
20 procedure as provided in this article with respect to a
21 redevelopment plan. Where real property acquired by a
22 community is to be transferred in accordance with the
23 urban renewal plan, any contract for such transfer and
24 the urban renewal plan (or such part or parts of such
25 contract or plan as the authority may determine) may be
26 recorded in the land records of the county in such manner
27 as to afford actual or constructive notice thereof.

Sec. 27. *Powers with Respect to Urban Renewal.*—A
2 community or a public agency created under this article.

3 shall have all the powers necessary or convenient to un-
4 dertake and carry out urban renewal plans and urban
5 renewal projects, including the authority to acquire and
6 dispose of property, to issue bonds and other obligations,
7 to borrow and accept grants from the federal government
8 or other source and to exercise the other powers which
9 this article confers on an authority with respect to re-
10 development projects. In connection with the planning
11 and undertaking of any urban renewal plan or urban
12 renewal project, the authority, the community, and all
13 public and private officers, agencies, and bodies shall have
14 all the rights, powers, privileges, and immunities which
15 they have with respect to a redevelopment plan or re-
16 development project, in the same manner as though all
17 of the provisions of this article applicable to a redevelop-
18 ment plan or redevelopment project were applicable to
19 an urban renewal plan or urban renewal project: *Pro-*
20 *vided*, That for such purpose the word "redevelopment"
21 as used in this article (except in this section and in the
22 definition of "redevelopment project" in section three)
23 shall mean "urban renewal", and the word "slum" and
24 the word "blighted" as used in this article (except in this
25 section and in the definitions in section three) shall mean
26 "blighted, deteriorated, or deteriorating", and the finding
27 prescribed in subsection (b) of section four with respect
28 to a blighted area shall not be required: *Provided further*,
29 That any disaster area referred to in section twenty-five
30 (b) shall constitute a "blighted area". In addition to
31 the surveys and plans which an authority is otherwise
32 authorized to make, an authority is hereby specifically
33 authorized to make (i) plans for carrying out a program
34 of voluntary repair and rehabilitation of buildings and
35 improvements, (ii) plans for the enforcement of laws,
36 codes, and regulations relating to the use of land and the
37 use and occupancy of buildings and improvements, and
38 to the compulsory repair, rehabilitation, demolition, or
39 removal of buildings and improvements, (iii) plans for
40 the relocation of persons (including families, business
41 concerns and others) displaced by an urban renewal
42 project, (iv) preliminary plans outlining urban renewal
43 activities for neighborhoods to embrace two or more ur-

44 ban renewal areas, and (v) preliminary surveys to de-
45 termine if the undertaking and carrying out of an urban
46 renewal project are feasible. The authority is authorized
47 to make relocation payments to or with respect to persons
48 (including families, business concerns and others) dis-
49 placed by an urban renewal project, for moving expenses
50 and losses of property for which reimbursement or com-
51 pensation is not otherwise made, including the making of
52 such payments financed by the federal government. The
53 authority is also authorized to develop, test, and report
54 methods and techniques, and carry out demonstrations
55 and other activities, for the prevention and the elimina-
56 tion of slums and urban blight.

Sec. 28. *Assistance to Urban Renewal by Communities
2 and Other Public Bodies.*—Any community or other public
3 body is hereby authorized (without limiting any provi-
4 sions in the preceding section) to do any and all things
5 necessary to aid and cooperate in the planning and under-
6 taking of an urban renewal project in the area in which
7 such community or public body is authorized to act, in-
8 cluding the furnishing of such financial and other assist-
9 ance as the community or public body is authorized by
10 this article to furnish for or in connection with a re-
11 development plan or redevelopment project. An authority
12 is hereby authorized to delegate to a community or other
13 public body any of the powers or functions of the au-
14 thority with respect to the planning or undertaking of
15 an urban renewal project in the area in which such com-
16 munity or public body is authorized to act, and such com-
17 munity or public body is hereby authorized to carry out
18 or perform such powers or functions for the authority.
19 Any public body is hereby authorized to enter into agree-
20 ments (which may extend over any period, notwithstand-
21 ing any provision or rule of law to the contrary) with
22 any other public body or bodies respecting action to be
23 taken pursuant to any of the powers granted by this ar-
24 ticle, including the furnishing of funds or other assistance
25 in connection with an urban renewal plan or urban re-
26 newal project.

Sec. 29. *Workable Program; Powers Conferred Are Sup-*

2 *plemental*.—The governing body of the community, or
3 such public officer or public body as it may designate, is
4 hereby authorized to prepare a workable program (which
5 may include an official plan of action, as it exists from
6 time to time for effectively dealing with the problem of
7 urban slums and blighted, deteriorated, or deteriorating
8 areas within the community and for the establishment
9 and preservation of a well-planned community with well-
10 organized residential neighborhoods of decent homes and
11 suitable living environment for adequate family life) for
12 utilizing appropriate private and public resources to elim-
13 inate, and prevent the development or spread of, slums
14 and urban blight and deterioration, to encourage needed
15 urban rehabilitation, to provide for the redevelopment of
16 blighted, deteriorated, or slum areas, or to undertake such
17 of the aforesaid activities or other feasible activities as
18 may be suitably employed to achieve the objectives of
19 such a program.

20 The powers conferred by this article shall be in addition
21 and supplemental to the powers conferred by any other
22 law.

CHAPTER 140

(Com. Sub. for House Bill No. 263—Originating in the
House Committee on Finance)

AN ACT to amend and reenact section three, article two, chap-
ter fifteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the depart-
ment of public safety.

[Passed March 7, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 2. Department of Public Safety.

Section

3. Companies and platoons and how constituted; training of mem-
bers and other peace officers; salaries and bonds of members.

Be it enacted by the Legislature of West Virginia:

That section three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. *Companies and Platoons and How Constituted; Training of Members and Other Peace Officers; Salaries and Bonds of Members.*—The superintendent shall create, appoint and equip a department of public safety which shall, in addition to the personnel provided for in section two of this article, consist of four companies or platoons. Each company or platoon shall be composed of one captain, one lieutenant, one first sergeant, five sergeants, ten corporals and such number of troopers as the superintendent may decide best, but such number of troopers in any company or platoon shall not at any time be less than twenty-five nor more than sixty-five.

The superintendent shall provide adequate facilities for the training of all members of the department and shall prescribe a basic training course for newly enlisted members. He shall also provide advanced or in service training from time to time for all members of the department. The superintendent may, in his discretion, hold training classes for other peace officers in the state without cost to such officers, except actual expenses for food, lodging and school supplies.

Members of the department shall receive salaries, as follows:

The inspector shall receive an annual salary of five thousand two hundred twenty dollars; captains shall each receive an annual salary of four thousand four hundred forty dollars; lieutenants shall each receive an annual salary of four thousand one hundred forty dollars; the master sergeants and first sergeants shall each receive an annual salary of three thousand seven hundred eighty dollars; sergeants shall each receive an annual salary of three thousand six hundred dollars; corporals shall each receive an annual salary of three thousand four hundred eighty dollars; and each newly enlisted trooper shall receive a salary of two hundred dollars during the period

36 of his basic training, and upon the satisfactory completion
37 of such training and assignment to active duty each such
38 trooper shall receive, during the remainder of his first
39 year's service, a salary of two hundred fifty dollars month-
40 ly. During the second year of his service in the depart-
41 ment each trooper shall receive an annual salary of three
42 thousand one hundred twenty dollars; during the third
43 year of his service each trooper shall receive an annual
44 salary of three thousand two hundred forty dollars; and
45 during the fourth and fifth years of his service each
46 trooper shall receive an annual salary of three thousand
47 three hundred sixty dollars. Each member of the depart-
48 ment entitled thereto by the provisions hereof shall re-
49 ceive an increase in salary over that hereinbefore set forth
50 in this section, for grade and rank, based on length of
51 service, including that heretofore and hereafter served,
52 with the department, as follows: For each five-year pe-
53 riod of service with the department from the date of first
54 enlistment, each member of the department shall receive
55 a salary increase of one hundred twenty dollars per year
56 to be effective during his next five years of service, which
57 increases shall be successive and cumulative until a total
58 of five such increases shall be received.

59 In applying the foregoing salary schedule where salary
60 increases are provided for length of service, members of
61 the department in service at the time this article becomes
62 effective shall be given credit for prior service and shall
63 be paid such salaries as the same length of service will
64 entitle them to receive under the provisions hereof.

65 Each member of the department of public safety, except
66 the superintendent and civilian employees, shall, before
67 entering upon the discharge of his duties, execute a bond
68 with the security in the sum of three thousand five hun-
69 dred dollars payable to the state of West Virginia, con-
70 ditioned for the faithful performance of his duties as such,
71 and such bond shall be approved as to form by the attor-
72 ney general, and as to sufficiency by the board of public
73 works, and the same shall be filed with the secretary of
74 state and preserved in his office.

CHAPTER 141

(House Bill No. 334—By Mr. Myles)

AN ACT to repeal sections seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven and seventy-eight, article one, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend said chapter fifteen by adding thereto a new article, numbered and designated article six, creating the state armory board and providing for the construction, acquisition, financing, operation, maintenance and disposition of armories and armory facilities by said board.

[Passed March 8, 1957; in effect from passage. Approved by the Governor.]

Article 6. State Armory Board.

Section

1. Legislative purpose and authority.
2. Credit of the state not pledged.
3. Definitions.
4. State armory board.
5. Duties of the board.
6. Powers of the board.
7. Authority of board to issue armory board revenue bonds; grants and gifts.
8. Trustee of holders of bonds.
9. Application of proceeds of bonds, grants and appropriations.
10. Rentals and other revenues.
11. Authority of board to pledge revenue as security.
12. Title to vest in state.
13. Lease of armory or armory facilities by adjutant general.
14. acquisition of property; condemnation.
15. Preliminary expenses.
16. Municipal aid for armory purposes; issuance of bonds.
17. Disposition of abandoned and unsuitable armories or armory facilities.
18. Exemption from taxation.
19. Article not authority to create state debt.
20. Compliance with this article and state constitution; only restrictions on construction and management of project.

Be it enacted by the Legislature of West Virginia:

That sections seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven and seventy-eight, article one, chapter

fifteen of the code of West Virginia, one thousand nine hundred thirty-one as amended, be repealed; and that said chapter fifteen be amended by adding thereto a new article, numbered and designated article six, to read as follows:

Section 1. *Legislative Purpose and Authority.*—In order
2 to provide modern and efficient facilities for the training,
3 operations, supply and administration of the national
4 guard, to provide for the defense of the state in time of
5 war and to repel invasion and suppress insurrection, to
6 provide facilities for use in time of fires, floods, riots and
7 other disasters, to provide public meeting places, recre-
8 ational and other facilities and to promote the general
9 welfare, the state armory board (hereinafter created) is
10 hereby authorized and empowered to construct, acquire,
11 improve, maintain, repair and operate armories and
12 armory projects (as hereinafter defined) and to issue
13 armory board revenue bonds of the state of West Vir-
14 ginia, payable solely from revenues, to pay the cost of
15 such projects.

Sec. 2. *Credit of the State not Pledged.*—Armory board
2 revenue bonds issued under the provisions of this article
3 shall not be deemed to constitute a debt of the state or
4 of any political subdivision thereof or a pledge of the
5 faith and credit of the state or of any such political sub-
6 division, but such bonds shall be payable solely from the
7 funds herein provided therefor from revenues. All such
8 bonds shall contain on the face thereof a statement to the
9 effect that neither the state nor any political subdivision
10 thereof shall be obligated to pay the same or the interest
11 thereon except from revenues of the project or projects
12 for which they are issued and that neither the faith and
13 credit nor the taxing power of the state or any political
14 subdivision thereof is pledged to the payment of the
15 principal of or the interest on such bonds.

Sec. 3. *Definitions.*—The following terms, wherever
2 used or referred to in this article shall have the following
3 meanings, unless a different meaning clearly appears from
4 the context:

5 (a) the word "board" shall mean the state armory

6 board created by section four of this article, or if such
7 board be abolished, any board or officer succeeding to the
8 functions thereof, or upon whom the powers given by this
9 article to the board shall be given by law.

10 (b) The word "bonds" shall mean armory board reve-
11 nue bonds issued under the provisions of section seven of
12 this article.

13 (c) The term "armory" shall mean and embrace build-
14 ings, areas and centers and the equipment and other
15 facilities appurtenant thereto, including armories, arsenals,
16 ranges, camp grounds, service centers, training areas,
17 concentration areas, and warehouses, used for the train-
18 ing, administration, operations and maintenance of the
19 national guard or any combination or combinations there-
20 of, and any other equipment and facilities incorporated
21 therein for the accomplishment of the purposes set forth
22 in section one of this article.

23 (d) The words "project" or "armory project" shall be
24 deemed to mean collectively the acquisition and con-
25 struction of buildings, structures and other works, together
26 with all roads, incidental approaches and other facilities
27 appurtenant thereto and all property, rights, easements
28 and other interests, which the board shall determine to
29 construct, acquire, or improve under the provisions of
30 this article in order to provide new or improved military
31 facilities, and the necessary maintenance and equipment
32 therefor.

33 (e) The term "cost of project" shall embrace the cost of
34 construction, the cost of all land, rights-of-way, property
35 rights, easements and interest acquired by the board for
36 such construction, the cost of all property, material, labor,
37 machinery and equipment deemed essential thereto, cost
38 of improvements, financing charges, interest during con-
39 struction and for a period not to exceed one year after
40 completion of construction, cost of preliminary estimates,
41 plans, surveys and other expenses necessary or incident
42 to determining the feasibility or practicability of con-
43 struction of the project, administrative expenses and all
44 other expenses, including legal fees, trustees', engineers'
45 and architects' fees which may be necessary or incident

46 to the financing, construction and placing of the project
47 in operation.

48 (f) The term "rent" or "rental" shall include all monies
49 received for the use of any part of the project, whether
50 from the state of West Virginia, or any officer, depart-
51 ment or public corporation thereof, or from any private
52 corporation or person: *Provided*, That nothing in this arti-
53 cle shall be taken to authorize the payment by or on behalf
54 of the state of any rent in excess of the fair rental value
55 of the property used by or for such state officer, or depart-
56 ment, or public corporation in the exercise of his or its
57 statutory duties.

Sec. 4. *State Armory Board.*—There is hereby created
2 a board to be known as the state armory board, and by
3 that name the board may sue and be sued, and plead and
4 be impleaded. It shall be a body corporate and is hereby
5 constituted an agency of the state. The exercise by the
6 board of the powers conferred by this article in the
7 acquisition, financing, construction, operation and main-
8 tenance of armories and armory projects shall be deemed
9 and held to be an essential governmental function. The
10 board shall consist of the governor, the secretary of state
11 and the auditor. The governor shall act as chairman of
12 the board and the secretary of state shall act as secretary
13 of the board. Two members of the board shall constitute
14 a quorum and the vote of two members shall be necessary
15 for any action taken by the board.

16 The members and officers of the board shall not be
17 entitled to compensation for their services, but each mem-
18 ber shall be reimbursed for his actual expenses neces-
19 sarily incurred in the performance of his duties.

Sec. 5. *Duties of the Board.*—The board shall be re-
2 sponsible for the acquisition, financing, construction, and
3 disposition of armories. It shall properly maintain, repair,
4 operate, manage and control all armories, fix the rates of
5 rental, and establish by-laws and rules and regulations
6 for their use and operation, and may make and enter into
7 all contracts, agreements necessary and incidental to the
8 performance of its duties and execution of its powers un-

9 der this article. It shall audit and approve all bills, claims
10 and accounts in connection with the construction, acquisi-
11 tion, maintenance, repair and operation of all armories
12 before such bills, claims and accounts shall be paid, and
13 it shall perform such other duties as this article may
14 require or as may be otherwise required by law.

Sec. 6. *Powers of the Board.*—The board is hereby au-
2 thorized and empowered:

3 (a) To adopt by-laws for the regulation of its affairs
4 and the conduct of its business.

5 (b) To adopt an official seal and alter the same at
6 pleasure.

7 (c) To sue and be sued in its own name, plead and be
8 impleaded: *Provided, however,* That any and all actions
9 at law or in equity against the board shall be brought
10 only in the county in which the principal office of the
11 board is located.

12 (d) To construct, maintain, repair and operate and dis-
13 pose of armories and armory projects at such locations
14 within the state as may be determined by the board.

15 (e) To issue armory board revenue bonds of the state
16 of West Virginia payable solely from revenues, for the
17 purpose of paying all or any part of the cost of any one
18 or more armory projects.

19 (f) To contract and to acquire in the name of the state
20 by purchase or otherwise on such terms and in such man-
21 ner as it may deem proper, or by the exercise of the right
22 of condemnation in the manner hereinafter provided, such
23 public or private lands, including public parks or reserva-
24 tions, or parts thereof or rights therein, rights-of-way,
25 property, rights, easements and interests, as it may deem
26 necessary for carrying out the provisions of this article;
27 and to dispose of the same in accordance with the law:
28 *Provided, however,* That no compensation shall be paid
29 for public lands owned by the state or any subdivision
30 thereof so taken and that all public property damaged
31 in carrying out the powers granted by this article, shall
32 be restored or repaired and placed in its original condition
33 as nearly as practicable.

34 (g) To acquire, hold and dispose of real and personal
35 property in the exercise of its powers and for its corporate
36 purposes.

37 (h) To appoint officers and agents and to fix their com-
38 pensation.

39 (i) To make and execute all contracts, agreements and
40 other instruments necessary or incident to the perform-
41 ance of its duties and for its corporate purposes.

42 (j) To receive and accept from any federal agency
43 grants for or in aid of armory projects, and to receive and
44 accept aid or contributions of either money, property,
45 labor or other things of value, from any source including
46 counties, municipalities, boards of education and other
47 political subdivisions or agencies of the state.

48 (k) To charge rent for the use of any armory or armory
49 project, or any part thereof, subject to and in accordance
50 with such agreements with bondholders as may be made
51 as hereinafter provided.

52 (l) To enter upon any lands or premises for the pur-
53 poses of making surveys, soundings and examinations.

54 (m) To do all things necessary or convenient to carry
55 out the powers granted in this article, including the man-
56 agement and use of armories and armory projects not in-
57 consistent with their use by the state for armory purposes
58 as defined herein.

Sec. 7. *Authority of Board to Issue Armory Board
2 Revenue Bonds; Grants and Gifts.*—The board is hereby
3 empowered to raise the cost of the project, as defined
4 hereinabove, by the issuance of armory board revenue
5 bonds of the state of West Virginia, the principal of and
6 interest on which bonds shall be payable solely from the
7 special fund provided by section ten of this article for
8 such payment. Such bonds shall be authorized by a reso-
9 lution of the board which shall recite an estimate by the
10 board of such cost, and shall provide for the issuance of
11 bonds in an amount sufficient, when sold as hereinafter
12 provided to produce such cost, less the amount of any
13 grant or grants, gift or gifts, received or in the opinion of
14 the board expected to be received from the United States

15 of America, or from any other source. Such bonds shall
16 bear interest at not more than four per cent per annum,
17 payable semi-annually, and shall mature in not more
18 than thirty years from their date or dates, and may be
19 made redeemable at the option of the state, to be exer-
20 cised by the board, at such price and under such terms
21 and conditions as the board may fix prior to the issuance
22 of such bonds. The board shall fix the denominations of
23 said bonds, the principal and interest of which shall be
24 payable at the office of the treasurer of the state of West
25 Virginia, at the capitol of said state, or, at the option of
26 the holder, at some bank or trust company in the city of
27 New York, to be named in the bond, in such medium, as
28 may be determined by the board. Proceeds of such bonds
29 shall be used solely for the payment of the cost of the
30 project and shall be deposited and checked out as provided
31 by section nine of this article, and under such further
32 restrictions, if any, as the board may provide. The board
33 shall determine the form of such bonds, including coupons
34 to be attached thereto, which bonds shall bear the fac-
35 simile signature of the governor as chairman of the board
36 and shall be signed by the secretary of state as secretary
37 of the board, under the great seal of the state, attested
38 by the secretary of state, and the coupons attached thereto
39 shall bear the facsimile signature of the governor as chair-
40 man of the board. In case any of the officers whose signa-
41 tures appear on the bonds or coupons shall cease to be
42 such officers before the delivery of such bonds, such sig-
43 natures shall nevertheless be valid and sufficient for all
44 purposes the same as if they had remained in office until
45 such delivery. The board may provide for the registration
46 of such bonds in the name of the owner as to the prin-
47 cipal loan, and as to both principal and interest under
48 such terms and conditions as the board may determine,
49 and shall sell such bonds in such manner as it may be
50 determined to be for the best interests of the state, taking
51 into consideration the financial responsibility of the pur-
52 chaser, and the terms and conditions of the purchaser
53 and especially the availability of the proceeds of the
54 bonds when required for payment of the costs of the

34 (g) To acquire, hold and dispose of real and personal
35 property in the exercise of its powers and for its corporate
36 purposes.

37 (h) To appoint officers and agents and to fix their com-
38 pensation.

39 (i) To make and execute all contracts, agreements and
40 other instruments necessary or incident to the perform-
41 ance of its duties and for its corporate purposes.

42 (j) To receive and accept from any federal agency
43 grants for or in aid of armory projects, and to receive and
44 accept aid or contributions of either money, property,
45 labor or other things of value, from any source including
46 counties, municipalities, boards of education and other
47 political subdivisions or agencies of the state.

48 (k) To charge rent for the use of any armory or armory
49 project, or any part thereof, subject to and in accordance
50 with such agreements with bondholders as may be made
51 as hereinafter provided.

52 (l) To enter upon any lands or premises for the pur-
53 poses of making surveys, soundings and examinations.

54 (m) To do all things necessary or convenient to carry
55 out the powers granted in this article, including the man-
56 agement and use of armories and armory projects not in-
57 consistent with their use by the state for armory purposes
58 as defined herein.

Sec. 7. *Authority of Board to Issue Armory Board
2 Revenue Bonds; Grants and Gifts.*—The board is hereby
3 empowered to raise the cost of the project, as defined
4 hereinabove, by the issuance of armory board revenue
5 bonds of the state of West Virginia, the principal of and
6 interest on which bonds shall be payable solely from the
7 special fund provided by section ten of this article for
8 such payment. Such bonds shall be authorized by a reso-
9 lution of the board which shall recite an estimate by the
10 board of such cost, and shall provide for the issuance of
11 bonds in an amount sufficient, when sold as hereinafter
12 provided to produce such cost, less the amount of any
13 grant or grants, gift or gifts, received or in the opinion of
14 the board expected to be received from the United States

15 of America, or from any other source. Such bonds shall
16 bear interest at not more than four per cent per annum,
17 payable semi-annually, and shall mature in not more
18 than thirty years from their date or dates, and may be
19 made redeemable at the option of the state, to be exer-
20 cised by the board, at such price and under such terms
21 and conditions as the board may fix prior to the issuance
22 of such bonds. The board shall fix the denominations of
23 said bonds, the principal and interest of which shall be
24 payable at the office of the treasurer of the state of West
25 Virginia, at the capitol of said state, or, at the option of
26 the holder, at some bank or trust company in the city of
27 New York, to be named in the bond, in such medium, as
28 may be determined by the board. Proceeds of such bonds
29 shall be used solely for the payment of the cost of the
30 project and shall be deposited and checked out as provided
31 by section nine of this article, and under such further
32 restrictions, if any, as the board may provide. The board
33 shall determine the form of such bonds, including coupons
34 to be attached thereto, which bonds shall bear the fac-
35 simile signature of the governor as chairman of the board
36 and shall be signed by the secretary of state as secretary
37 of the board, under the great seal of the state, attested
38 by the secretary of state, and the coupons attached thereto
39 shall bear the facsimile signature of the governor as chair-
40 man of the board. In case any of the officers whose signa-
41 tures appear on the bonds or coupons shall cease to be
42 such officers before the delivery of such bonds, such sig-
43 natures shall nevertheless be valid and sufficient for all
44 purposes the same as if they had remained in office until
45 such delivery. The board may provide for the registration
46 of such bonds in the name of the owner as to the prin-
47 cipal loan, and as to both principal and interest under
48 such terms and conditions as the board may determine,
49 and shall sell such bonds in such manner as it may be
50 determined to be for the best interests of the state, taking
51 into consideration the financial responsibility of the pur-
52 chaser, and the terms and conditions of the purchaser
53 and especially the availability of the proceeds of the
54 bonds when required for payment of the costs of the

55 project, such sales to be made at a price not lower
56 than a price which, computed upon standard tables
57 of bond values, will show a net return of five and
58 one-half per centum per annum to the purchaser upon
59 the amount paid therefor. If the proceeds of such bonds
60 by error and calculation or otherwise, shall be less than
61 the cost of the project, additional bonds may in like man-
62 ner be issued to provide the amount of the deficiency, and
63 unless otherwise provided for in the trust agreement here-
64 inafter mentioned, shall be deemed to be of the same issue,
65 and shall be entitled to payment from the same fund,
66 without preference or priority as to the bonds before issue.
67 If the proceeds of the bonds issued for the project shall
68 exceed the costs thereof, surplus shall be paid into the
69 fund provided by section ten of this article for payment
70 of the principal and interest of such bonds. Such fund
71 may be used for the purchase of any of the outstanding
72 bonds payable from such fund at the market price, but at
73 not exceeding the price, if any, of which bonds in the same
74 year may be redeemable, and all bonds redeemed or pur-
75 chased shall not again be issued.

2 Sec. 8. *Trustee of Holders of Bonds.*—The board may
3 enter into an agreement or agreements with any trust
4 company, or with any bank having the powers of a trust
5 company, either within or outside of the state, as trustee
6 for the holders of bonds issued hereunder, setting forth
7 therein such duties of the state and of the board in respect
8 to the acquisition, construction, improvement, mainte-
9 nance, operation, repair, and insurance of the project, the
10 conservation and application of all monies, the insurance
11 of monies on hand or on deposit, and the rights and
12 remedies of the trustee and the holders of the bonds, as
13 may be agreed upon with the original purchasers of such
14 bonds, and including therein provisions restricting the
15 individual right of action of bondholders as is customary
16 in trust agreements respecting bonds and debentures of
17 corporations, protecting and enforcing the rights and
18 remedies of the trustee and the bondholders, and pro-
19 viding for approval by the original purchasers of the bonds
of the appointment of consulting architects, and of the

20 security given by those who contract to construct the
21 projects and by the bank or trust company in which the
22 proceeds of the bonds or rental shall be deposited and
23 for approval by the consulting architects of all contracts
24 for construction. Any such trust agreement may pledge
25 or assign the rents or other revenues to be received by the
26 board, but shall not convey or mortgage any armory or
27 armory projects or any part thereof.

Sec. 9. *Application of Proceeds of Bonds, Grants and Appropriations.*—The proceeds of all bonds issued and
2 sold under the provisions of this article, the proceeds of
3 any grants, gifts or contributions received by the board
4 and any appropriations for the construction or acquisition
5 of armory projects shall be paid to the treasurer of the
6 state of West Virginia who shall not commingle such mon-
7 ies with other monies, but shall deposit them in separate
8 bank account or accounts. The monies in said accounts
9 shall be paid out on check of the treasurer on requisition
10 of the chairman of the board, or such person as the board
11 may authorize to make such requisition. All deposits of
12 such monies shall if required by the treasurer or the board
13 be secured by obligations to the United States, of the state
14 of West Virginia or of the board, of a market value equal
15 at all times to the deposit and all banking institutions are
16 authorized to give such security for such deposits.
17

Sec. 10. *Rentals and Other Revenues.*—The board is
2 hereby authorized to fix, revise, charge and collect rent
3 for the use of armories or any part or parts thereof, and
4 to contract with the adjutant general of the state, with any
5 other officer, department or public corporation or political
6 subdivision thereof and with any person, partnership,
7 association or corporation desiring the use thereof, and to
8 fix the terms, conditions, rents and rates of charges for
9 such use: *Provided, however,* That the primary purpose
10 of armories shall be their use by the national guard, and
11 their use by other than the national guard shall be sub-
12 ject to and shall not interfere with such primary purpose.
13 Such rents shall be so fixed and adjusted in respect of
• 14 the aggregate of rents from armories in connection with

15 which the bonds of any issue shall have been issued as to
16 provide a fund sufficient with other revenues, if any, to
17 pay (a) the cost of maintaining, repairing and operating
18 such armories and (b) the principal of and interest on
19 such bonds as the same shall become due and payable, and
20 to create reserves for such purposes. All rents and other
21 revenues of the board received from the use of armories
22 shall be paid into a special account of the treasurer of the
23 state of West Virginia to be known as the general armory
24 fund and shall be used solely for the purposes of this
25 article. Such monies shall be checked out and secured in
26 the same manner as provided in section nine of this article.

2 *Sec. 11. Authority of Board to Pledge Revenue as Se-*
3 *curity.*—The board shall have authority to pledge all
4 revenue derived from any project as security for any bonds
5 issued under this article to defray the cost of such project.
6 In any case in which the board may deem it advisable it
7 shall also have the authority to pledge the revenue de-
8 rived from any existing armories as additional security for
9 the payment of any bonds issued under the provisions of
10 this article to pay the cost of any armory project.

2 *Sec. 12. Title to Vest in State.*—Title to all property,
3 armories and armory projects, upon delivery and accept-
4 ance, shall vest in the state and shall be held in the name
5 of the state. The board may, upon such terms as the board
6 may deem to be in the best interest of the state, transfer
7 title to any armory to the United States, but may provide
8 for the retention by the state of civil and police jurisdic-
9 tion through such armory and a right to tax persons
10 residing thereon.

11 All money received by the board from any armory sold,
12 damaged or destroyed, unless pledged as security for the
13 payment of bonds issued under the provisions of this
14 article, shall be paid to the treasurer of the state and
15 credited to the account of the board, and may be expended
16 for the construction, acquisition or improvement of
17 armories under the provisions and limitations of this
18 article.

2 *Sec. 13. Lease of Armory or Armory Facilities by*

2 *Adjutant General.*—Nothing contained in this article shall
3 be construed as limiting the authority of the adjutant
4 general to enter into leases for armories on behalf of the
5 national guard or state guard.

Sec. 14. *Acquisition of Property; Condemnation.*—The
2 board is hereby authorized and empowered to acquire by
3 purchase, whenever it shall deem such purchase expedient,
4 any land, property, rights, rights-of-way, franchises, ease-
5 ments and other interests in lands as it may deem neces-
6 sary or convenient for the construction or operation of
7 any armory or armory project upon such terms and at
8 such price as may be considered by it to be reasonable
9 and can be agreed upon between the board and the owner
10 thereof, and to take title thereto in the name of the state.
11 Whenever a reasonable price cannot be agreed upon, or
12 whenever the owner is legally incapacitated, or is absent,
13 unknown or unable to convey valid title, the board is
14 hereby authorized and empowered to acquire, by the
15 exercise of the power of condemnation in accordance with
16 and subject to the provisions of any and all existing laws
17 and statutes applicable to the exercise of the power of
18 condemnation of property for public use, any land, prop-
19 erty, rights, rights-of-way, franchises, easements or other
20 property deemed necessary or convenient for the con-
21 struction or the efficient operation of any armory project
22 or necessary in the restoration of public or private prop-
23 erty damaged or destroyed. In any condemnation pro-
24 ceedings the court having jurisdiction of the suit, action
25 or proceeding may make such orders as may be just to the
26 board and to the owners of the property to be condemned
27 and may require an undertaking or other security to
28 secure such owners against any loss or damage by reason
29 of the failure of the board to accept and pay for the
30 property, but neither such undertaking or security nor
31 any act or obligation of the board shall impose any
32 liability upon the state or the board except such as may
33 be paid from the funds provided under the authority of
34 this article.

Sec. 15. *Preliminary Expenses.*—The adjutant general
2 is hereby authorized in his discretion to expend out of

3 any funds available for the purpose such monies as may
4 be necessary for the study of any preliminary armory
5 project or projects and for making necessary estimates,
6 plans and surveys to determine the feasibility of the con-
7 struction and financing thereof; and all such expenses
8 incurred by the adjutant general prior to the issuance of
9 bonds under the provisions of this article shall be paid
10 by the adjutant general and charged to the appropriate
11 armory project, and the adjutant general shall keep sepa-
12 rate records and accounts showing such amounts so
13 charged. Upon the sale of bonds for any armory project
14 the funds so expended by the adjutant general in connec-
15 tion with such project shall be reimbursed to the adjutant
16 general from the proceeds of such bonds.

Sec. 16. *Municipal Aid for Armory Purposes; Issuance*
2 *of Bonds.*—Any county or municipality or two or more
3 municipalities jointly may raise and appropriate money in
4 the aid of the acquisition, construction, maintenance, re-
5 pair and improvement of any armory located therein, and
6 to that end may issue bonds payable not more than thirty
7 years after their issue and bearing interest at a rate not
8 exceeding six per cent per annum, and may deposit such
9 money and funds and the proceeds of the sale of such
10 bonds with the state treasurer in the special account pro-
11 vided by section nine of this article to the credit of the
12 proper armory project, and may make such further pro-
13 visions for the maintenance and improvement of such
14 armory and its joint use with the national guard as may
15 be deemed necessary: *Provided*, That whenever the board
16 deems it expedient and in furtherance of the purpose of
17 this article it may purchase and finish armories already
18 built or partly built. Counties and municipalities con-
19 structing and financing armories under the provisions of
20 this article or the provisions of article four-a, chapter
21 eight of this code shall convey such armories to the armory
22 board upon payment of all bonds, and interest thereon,
23 issued for the construction or improvement thereof.

Sec. 17. *Disposition of Abandoned and Unsuitable*
2 *Armories or Armory Facilities.*—Whenever any armory
3 shall be no longer needed by the national guard, or other

4 military organization, or in the judgment of the board is
5 unsuitable for military purposes, the board shall have the
6 authority, and it is hereby expressly empowered to sell,
7 transfer and convey such armory to the municipality,
8 county or county board of education or any two or more
9 of the same or combination thereof in which the same
10 is located, for public purposes, upon such terms as the
11 board may deem to be in the best interest of the state:
12 *Provided*, That if such municipality, county or board of
13 education shall not purchase such armory, the board shall
14 then be authorized to sell, transfer and convey the same to
15 any person, firm, or corporation upon such terms as the
16 board may deem to be in the best interest of the state:
17 *Provided further*, That if the armory cannot be sold
18 in this manner, the board may lease it for other than mili-
19 tary purposes as provided in section ten of this article.

Sec. 18. *Exemption from Taxation.*—The exercise of the
2 powers granted in this article will be in all respects for
3 the benefit of the people of this state, and, as the construc-
4 tion, acquisition, improvement, operation and mainte-
5 nance of armories will constitute the performance of
6 essential governmental functions, the board shall not be
7 required to pay any taxes or assessments upon any armory
8 or any property acquired or used by the board under the
9 provisions of this article or upon the income therefrom,
10 and the bonds issued under the provisions of this article,
11 their transfer and the income therefrom, including any
12 profit made on the sale thereof, shall at all times be
13 exempt from taxation within the state.

Sec. 19. *Article Not Authority to Create State Debt.*—
2 Nothing in this article contained shall be so construed or
3 interpreted as to authorize and permit the incurring of
4 state debts of any kind or nature as contemplated by the
5 provisions of the constitution of the state of West Virginia
6 in relation to state debt, or any subdivision thereof.

Sec. 20. *Compliance With This Article and State Con-
2 stitution; Only Restrictions on Construction and Manage-
3 ment of Project.*—It shall not be necessary to secure from
4 any officer or board not named in this article any approval

5 or consent, or any certificate or finding, or to hold an elec-
6 tion, or to take any proceedings whatever, either for the
7 construction of such project, or the improvement, main-
8 tenance, operation, or repair thereof, or for the issuance
9 of bonds hereunder except such as are provided by this
10 article or are required by the constitution of the state.

CHAPTER 142

(Senate Bill No. 97—By Mr. Martin)

AN ACT to amend and reenact section three, article four, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the allotment or sale of property and the procedure therefor.

[Passed February 28, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 4. Partition.

Section

3. Allotment or sale; procedure for allotment.

Be it enacted by the Legislature of West Virginia:

That section three, article four, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. *Allotment or Sale; Procedure for Allotment.*

2 —When partition cannot be conveniently made, the en-
3 tire subject may be allotted to any party or parties who
4 will accept it, and pay therefor to the other party or
5 parties such sums of money as his or their interest
6 therein may entitle him or them to; or in any case in
7 which partition cannot be conveniently made, if the in-
8 terests of one or more of those who are entitled to the
9 subject, or its proceeds, will be promoted by a sale of

10 the entire subject, or allotment of part and sale of the
11 residue, and the interest of the other person or persons
12 so entitled will not be prejudiced thereby, the court, not-
13 withstanding the fact that any of those entitled may be
14 an infant, insane person, or convict, may order such sale,
15 or such sale and allotment, and make distribution of the
16 proceeds of sale, according to the respective rights of
17 those entitled, taking care, when there are creditors of
18 any deceased person who was a tenant in common, joint
19 tenant, or coparcener, to have the proceeds of such de-
20 ceased person's part applied according to the rights of
21 such creditors. Where it clearly appears to the court that
22 partition cannot be conveniently made, the court may
23 order sale without appointing commissioners. The court
24 making an order for sale shall, when the dividend of a
25 party exceeds the value of three hundred dollars, if such
26 party be an infant, insane person, or convict, require se-
27 curity for the faithful application of the proceeds of his
28 interest, in like manner as if the sale were made under
29 article one of this chapter.

30 In the event that allotment shall be made as afore-
31 said and the person or persons entitled to the proceeds,
32 for any reason, cannot agree upon the value of the sub-
33 ject, the court, or the judge thereof in vacation, shall ap-
34 point three disinterested and qualified persons to fix the
35 value of the whole subject, who, after being duly sworn to
36 make an appraisal of the fair market value of the subject,
37 shall within thirty days from the taking of such oath, ap-
38 praise the subject and make and file a written report of
39 their findings in the office of the clerk of the court in
40 which the suit is pending. If such appraisers report their
41 disagreement, or fail to file such report within thirty days,
42 other appraisers may in like manner be appointed, and
43 so again, from time to time, as often as may be neces-
44 sary. The report of the appraisers when filed, shall be
45 conclusive and binding upon all persons having any in-
46 terest in the subject, unless an objection is filed thereto
47 in said clerk's office within thirty days after the date of
48 the filing of such report by the appraisers. If objection
49 is made to such report, the court, or the judge thereof in

50 vacation, shall take evidence upon the value of the sub-
51 ject in the same manner as in other chancery matters,
52 shall find the fair market value of the subject and shall
53 decree payment therefor according to the respective rights
54 of those entitled thereto as their interest may appear,
55 taking care to protect the rights of creditors as aforesaid
56 in this section.

57 If any party to the suit refuses, or is unable because of
58 any disability, including but not limited to infancy, in-
59 sanity and conviction of crime, to make, execute and de-
60 liver a deed or other instrument transferring title to the
61 subject to the person or persons to whom the subject has
62 been allotted, the court, or the judge thereof in vacation,
63 shall appoint a special commissioner for the purposes of
64 accepting the purchase money from the person or per-
65 sons to whom the subject has been allotted, making, exe-
66 cuting and delivering thereto a deed or other instrument
67 therefor and distributing such purchase money according
68 to the respective rights of those persons entitled thereto.
69 The special commissioner so appointed shall give bond
70 and be governed in all respects as provided in section
71 one, article twelve, chapter fifty-five of this code.

CHAPTER 143

(Senate Bill No. 4—By Mr. Ballard and Mr. Reed)

AN ACT to repeal articles two and two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof two new articles, designated articles two and two-a; to amend and reenact sections four and nineteen, article four of said chapter; and to amend article nineteen of said chapter by adding thereto a new section, designated section four, all relating to the organization, administration and supervision of a system of state roads and highways.

[Passed March 9, 1957; in effect from passage. Approved by the Governor.]

Article

- 2. State Road Commission.
- 2-a. State Road Commissioner.
- 4. State Road System; Primary and Secondary Roads.
- 19. General Criminal Provisions.

Be it enacted by the Legislature of West Virginia:

That articles two and two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that two new articles, designated articles two and two-a, be enacted in lieu thereof; that sections four and nineteen, article four of said chapter, be amended and reenacted; and that article nineteen of said chapter be amended by adding thereto a new section, designated section four, all to read as follows:

Article 2. State Road Commission.**Section**

- 1. State road commission; purposes and responsibilities.
- 2. Members; appointment.
- 3. Offices and place of business.
- 4. Terms of office; vacancies.
- 5. Appointments; qualifications; status of present members; removal for cause.
- 6. Disqualifications; vacation of office.
- 7. Oath.
- 8. Commission meetings and organizations.
- 9. Compensation and expenses.
- 10. Powers and duties.
- 11. Intrastate toll bridges, acquisition; discharge of obligations.

Section 1. *State Road Commission; Purposes and Responsibilities.*—The state road commission of West Virginia, heretofore created and existing as a corporation, shall be and is hereby continued as in this article provided. The commission is hereby authorized and empowered to adopt and use a seal; to negotiate and enter into contracts; to institute, prosecute and defend suits, actions and proceedings; and to otherwise exercise all powers and functions necessary and germane to its public corporate existence and purposes.

Sec. 2. *Members; Appointment.*—The commission shall be composed of seven members, who shall be appointed by the governor by and with the advice and consent of the Senate. Nominations for all appointments hereunder shall be submitted by the governor to the Senate at the

6 first meeting thereof next after such appointments are
7 made.

2 *Sec. 3. Offices and Place of Business.*—The commission
3 shall be provided adequate offices at the state capital
4 where its books and records shall be kept and where its
5 meetings shall be held and its business transacted, except
6 as otherwise provided in this article.

2 *Sec. 4. Terms of Office; Vacancies.*—The term of office
3 of each member of the commission shall be seven years,
4 except that the first appointments made pursuant to this
5 article shall be for terms of one, two, three, four, five, six
6 and seven years, respectively. Terms shall commence as
7 of the first day of July and shall end as of the thirtieth
8 day of June. Any vacancy on the commission shall be
9 filled by appointment by the governor for a new term of
10 seven years or an unexpired term of less than seven years,
as the case may be.

2 *Sec. 5. Appointments; Qualifications; Status of Present*
3 *Members; Removal for Cause.*—On or before the first day
4 of July next after the effective date of this article, the gov-
5 ernor shall appoint the members of the commission. Not
6 more than four of the members shall be of the same po-
7 litical party. [^] One member shall be appointed from each
8 of the six congressional districts and one member shall
9 be appointed from the state at large. ⁾ Each member shall
10 be a citizen and resident of the state. Each member ap-
11 pointed from a congressional district shall be a citizen
12 and resident of such congressional district. Removal of
13 a member from the state or from the particular congres-
14 sional district from which he was appointed shall im-
15 mediately vacate his office. In making appointments to
16 the commission, the governor shall consider each ap-
17 pointee's age, ability, experience and general qualifica-
18 tions. Members of the commission shall be eligible for
19 reappointment to fill an unexpired term or a new term of
seven years.

20 Any members of the commission, who have been duly
21 appointed and qualified and approved by the Senate and
22 are in office when this article becomes effective, shall con-

23 tinue in office until their respective terms expire or until
24 their death, resignation or removal from office. In mak-
25 ing his initial appointments to the commission pursuant
26 to the provisions hereof, the governor shall ascertain the
27 names, residence addresses and political party affiliation
28 of any such members of the commission then in office and
29 shall select his first appointees with reference thereto and
30 due consideration thereof so as to comply with the resi-
31 dence and political party affiliation qualifications as here-
32 in prescribed.

33 As terms expire or positions on the commission other-
34 wise become vacant, the governor shall appoint persons to
35 fill all such vacancies on the commission as provided in
36 this article.

37 No member of the commission may be removed from
38 office by the governor except for official misconduct, in-
39 competence, neglect of duty or gross immorality, and then
40 only in the manner prescribed by law for the removal by
41 the governor of state elective officers.

Sec. 6. *Disqualifications; Vacation of Office.*—No per-
2 son while in the employ of, or holding, or who has within
3 twelve months held any official relation to any person,
4 firm or corporation selling or furnishing any materials
5 entering into the construction, reconstruction, repair or
6 maintenance of any road or highway of this state, or any
7 part thereof, or who is pecuniarily interested therein, as
8 a stockholder or otherwise, shall be a member of the state
9 road commission. No member of the commission shall
10 be a candidate for or hold any public office other than
11 that of member of the commission. A member of the
12 commission shall not be a member of any political com-
13 mittee while a member of the commission. In case any
14 member of the commission becomes a candidate for or is
15 appointed to any other public office or any political com-
16 mittee, his office as a member of the commission shall au-
17 tomatically and immediately be vacated.

Sec. 7. *Oath.*—Prior to the assumption of the duties of
2 his office as a member of the commission, each member
3 shall take and subscribe to the oath of office prescribed by

4 the constitution, the certificate of which oath shall be filed
5 with the secretary of state.

Sec. 8. *Commission Meetings and Organizations.*—The
2 commission shall convene in regular meetings at least once
3 every three months, unless necessity of any such quarterly
4 meeting is negatived by order entered in the minute rec-
5 ord of the commission. Special meetings shall be held,
6 on call of the chairman or any three members of the com-
7 mission, at such other times as circumstances and bus-
8 iness may warrant. All meetings of the commission shall
9 be held at its offices at the state capital unless by a ma-
10 jority vote the commission selects another meeting place.
11 Four members of the commission shall constitute a quo-
12 rum for transaction of business and a majority vote shall
13 be necessary for any action taken by the commission. At
14 the meeting held in July of each year, the commission
15 shall organize by electing one of its members as chairman
16 and another member as vice chairman for such year and
17 may also select a secretary who need not be a member of
18 the commission. The vice chairman shall have and may
19 exercise all of the powers of the chairman in the chair-
20 man's absence or inability to serve. In the event of the
21 absence or inability of the chairman and vice chairman
22 to serve as such at any meeting, a quorum of the members
23 of the commission present shall select a chairman pro
24 tempore. The commission shall keep a minute record of
25 its proceedings and transactions. Such record shall be
26 open to public inspection and examination. It shall adopt
27 and enter of record in its minutes such other rules for the
28 conduct of its meetings and the transaction of its business
29 as may be found expedient.

Sec. 9. *Compensation and Expenses.*—The members of
2 the commission shall each receive an honorarium of twen-
3 ty-five dollars for each day actually devoted to commis-
4 sion business and shall be reimbursed for their actual ex-
5 penses incurred in the discharge of their official du-
6 ties. The total honorarium paid to each member during
7 any one fiscal year shall not exceed three hundred dollars.
8 Statements covering expenses shall be itemized and veri-
9 fied by the member by whom submitted for payment.

2 Sec. 10. *Powers and Duties.*—The state road commis-
3 sion shall be an advisory body to the state road com-
4 missioner and shall have the following powers and
5 duties:

6 (1) To consider and study the entire field of legisla-
7 tion and administration concerning roads and highways,
8 and motor vehicle regulation.

9 (2) To advise the commissioner concerning the high-
10 way needs of particular localities or districts of the state.

11 (3) To recommend policies and practices to the com-
12 missioner relative to any duty imposed upon him by
13 law.

14 (4) To investigate the conduct and the work of the de-
15 partment, and for this purpose it shall have access at
16 any time to all books, papers, documents and records of
17 the department.

18 (5) To advise or make recommendations to the gov-
19 ernor and the Legislature relative to the highway policy
of the state.

2 Sec. 11. *Intrastate Toll Bridges, Acquisition; Discharge*
3 *of Obligations.*—The commission is authorized to include
4 any or all existing intrastate toll bridges within the sys-
5 tem of state roads and highways and is further authorized
6 to expend out of the proceeds of any sale of West Virginia
7 state road bonds, authorized by the Legislature and the
8 “Good Roads Amendment of 1920”, if not otherwise re-
9 stricted by law, not to exceed one million five hundred
10 thousand dollars, (a) for the purpose of discharging out-
11 standing bonds or obligations upon any of such intrastate
12 toll bridges which become the property of the commission
13 when such bonds or obligations are discharged, and (b)
14 for the purpose of acquiring by eminent domain pro-
15 ceedings any or all of the existing privately-owned intra-
16 state toll bridges for including in such system of roads
and highways.

Article 2-a. State Road Commissioner.

Section

1. State road commissioners; appointment and tenure.
2. Qualifications; duties, office, oath and bond.
3. Salary and expenses.

4. Selection and organization of personnel; duties; bonds.
5. Personnel disqualifications; vacation of position.
6. Accounting and auditing.
7. Legal services.
8. Powers, duties and responsibilities of commissioner.
9. Persons required to assist commissioner.
10. Hearings, investigations and proceedings; evidence and subpoena, contempt.
11. Road maps; reproduction and distribution.
12. Set-back lines, islands, curb separations, entrance approaches, walks and parking.
13. Purchase of materials, supplies and equipment.
14. Disposition of equipment and materials; transfers, trades and sales; inventory reports.
15. Other laws not controlling.
16. Information on vendors to commissioner.

• *Section 1. State Road Commissioner; Appointment and*

2 *Tenure.*—The office of state road commissioner heretofore
 3 created by law shall be continued. The governor, by and
 4 with the advice and consent of the Senate, shall appoint
 5 a state road commissioner for a term of four years.
 6 Within thirty days after the effective date of this article,
 7 the governor shall appoint a state road commissioner
 8 whose term shall last until the first day of March, one
 9 thousand nine hundred sixty-one. The incumbent com-
 10 missioner shall continue to serve in that capacity until
 11 a successor is appointed pursuant to the terms of this
 12 article. Thereafter, all appointments shall be for a term
 13 of four years, except that an appointment to fill a vacancy
 14 shall be for the unexpired term.

15 During his term no commissioner who has been duly
 16 appointed and qualified and confirmed by the Senate may
 17 be removed from office except for official misconduct,
 18 incompetence, neglect of duty, gross immorality, perma-
 19 nent and total disability, habitual drunkenness or drug
 20 addiction, and then only in the manner prescribed by
 21 law for the removal by the governor of state elective
 22 officials.

Sec. 2. Qualifications; Duties; Office, Oath and Bond.—

2 The commissioner shall be a person who is experienced
 3 in highway planning, finance, construction, maintenance,
 4 management and supervision qualifying him for the
 5 duties of his office; shall devote his full time and at-
 6 tention to his official duties and responsibilities; shall
 7 reside at and maintain his office headquarters at the

8 state capital; shall be the chief executive officer of
9 the commission and, subject to other provisions of law,
10 shall have direct and full control, management and
11 supervision of the entire state road program and system;
12 and shall, prior to assumption of the duties of his office,
13 take and subscribe to the oath prescribed by the consti-
14 tution and execute a bond, with surety approved by the
15 commission, in the penal sum of twenty-five thousand
16 dollars, which executed oath and bond shall be filed with
17 the secretary of state. Premiums on the commissioner's
18 bond shall be paid from commission funds.

Sec. 3. *Salary and Expenses.*—The commissioner shall
2 receive an annual salary of fourteen thousand dollars.
3 He shall be allowed and paid necessary traveling ex-
4 penses incident to performance of his duties. Statements
5 covering such expenses shall be itemized and verified by
6 the commissioner.

Sec. 4. *Selection and Organization of Personnel; Duties;
2 Bonds.*—The commissioner shall be in charge of and re-
3 sponsible for the selection, employment and effective
4 organization of all commission personnel for the entire
5 state road and highway program. He may establish such
6 divisions, sections and other functional and organiza-
7 tional units within the commission as may be necessary
8 and practical in the full and effective discharge of the
9 duties and responsibilities of his office. Except as other-
10 wise provided by law, all commission personnel shall
11 be classified pursuant to the job classification system
12 and shall be paid pursuant to the salary scale established
13 by the commissioner.

14 The commissioner shall select and employ a busi-
15 ness manager assistant and a chief engineer assistant,
16 who shall be a registered professional engineer, and shall
17 establish such other offices, activities, divisions, sec-
18 tions and organizational units as may be necessary
19 and practical. The business manager assistant shall be
20 in charge of and responsible for matters of finance,
21 personnel, public relations and such other functions as
22 may be assigned to him from time to time by the com-
23 missioner. The chief engineer assistant shall be in charge

24 of and responsible for planning, equipment, materials,
25 construction, maintenance and such other functions
26 as may from time to time be assigned to him by the
27 commissioner.

28 The commissioner shall require every employee who
29 collects fees or handles funds or who has custody or con-
30 trol of equipment or supplies belonging to the state to give
31 bond, with such sureties and in such penal sum as may be
32 approved by the commissioner, for the faithful discharge
33 of each such employee's duties and his accounting for all
34 such fees, funds, equipment and supplies coming into his
35 hands or under his custody or control. All such bonds,
36 when approved by the commissioner, shall be filed in the
37 office of the secretary of state. Premiums on all such bonds
38 shall be paid from commission funds.

Sec. 5. *Personnel Disqualifications; Vacation of Posi-*
2 *tion.*—No person, while in the employ of or holding any
3 official relation to any person, firm or corporation selling
4 or furnishing materials entering into the construction,
5 reconstruction, repair or maintenance of any state roads
6 or highways, or any part thereof, or who is pecuniarily
7 interested therein as a stockholder or otherwise, shall be
8 appointed commissioner or be otherwise employed in any
9 capacity or employment by the commission or commis-
10 sioner. Any such interest in or connection with any such
11 person, firm or corporation, acquired by the commissioner
12 or any such employee of the commission or commissioner
13 subsequent to his appointment or employment, shall im-
14 mediately disqualify such person from holding the office
15 of commissioner or any other position or employment by
16 the commission or commissioner and such office or posi-
17 tion of employment, as the case may be, shall be imme-
18 diately vacated.

19 No person may be appointed as commissioner or em-
20 ployed in any other capacity or employment by the com-
21 mission or commissioner when he is a candidate for or
22 holds any public office or is a member of any political
23 party committee. In the event the commissioner or any
24 employee of the commission or commissioner becomes a
25 candidate for or holds any public office or becomes a

26 member of any political party committee, his office as
27 commissioner or position as employee, as the case may
28 be, shall be immediately vacated.

Sec. 6. *Accounting and Auditing.*—The commissioner, by
2 and through his business manager assistant, shall central-
3 ize, standardize and integrate the budget, accounting and
4 auditing services of the entire state road and highway
5 program. Whenever there is provided by law a uniform
6 system of accounting and auditing and policies and prac-
7 tices relating thereto for all state officials, departments
8 and agencies, such uniform system shall be adopted by
9 the commissioner. Until such system, policies and prac-
10 tices are formulated and prescribed, the commissioner
11 shall establish his own system, policies and practices for
12 all accounting and reporting services.

13 All commission accounting and auditing services shall
14 be on the fiscal year basis. The commissioner shall pre-
15 pare an annual financial report covering all receipts and
16 disbursements for each fiscal year and shall deliver such
17 report to the commission on or before the first day of
18 December next succeeding the end of the fiscal year.

19 The commissioner shall report quarterly to the com-
20 mission on finances, personnel and other aspects and
21 phases of the road program and system.

Sec. 7. *Legal Services.*—The commissioner shall select
2 and employ a competent legal staff adequate for legal
3 services required by him and shall provide therefor such
4 quarters, equipment, facilities, services and stenographic
5 and other personnel as may be necessary. In addition, the
6 commissioner may call upon the attorney general and the
7 prosecuting attorneys of the several counties, within their
8 respective jurisdictions, for legal assistance and services
9 as provided by law.

Sec. 8. *Powers, Duties and Responsibilities of Com-
2 missioner.* — In addition to all other duties, powers
3 and responsibilities given and assigned to the com-
4 missioner in this chapter, the commissioner may:

5 (1) Exercise general supervision over the state
6 road program and the construction, reconstruction,

7 repair and maintenance of state roads and high-
8 ways;

9 (2) Determine the various methods of road con-
10 struction best adapted to the various sections and areas
11 of the state and establish standards for the con-
12 struction and maintenance of roads and highways there-
13 in;

14 (3) Conduct investigations and experiments, hold hear-
15 ings and public meetings and attend and participate in
16 meetings and conferences within and without the state
17 for purposes of acquiring information, making findings
18 and determining courses of action and procedure relative
19 to advancement and improvement of the state road and
20 highway system;

21 (4) Enter private lands to make inspections and sur-
22 veys for road and highway purposes;

23 (5) Acquire, in the name of the commission, by lease,
24 grant, right of eminent domain or other lawful means, all
25 lands and interests and rights in lands necessary and re-
26 quired for roads, rights-of-way, cuts, fills, drains, storage
27 for equipment and materials, and road construction and
28 maintenance in general;

29 (6) Procure photostatic copies of any or all public
30 records on file at the state capitol of Virginia which may
31 be deemed necessary or proper in ascertaining the loca-
32 tion and legal status of public road rights-of-way located
33 or established in what is now the state of West Virginia,
34 which photostatic copies, when certified by the commis-
35 sioner, may be admitted in evidence, in lieu of the origi-
36 nal, in any of the courts of this state;

37 (7) Plan for and hold annually a school of good roads,
38 of not less than three nor more than six days' duration, for
39 instruction of his employees, which school shall be held
40 in conjunction with West Virginia university and may
41 be held at the university or at any other suitable place
42 in the state;

43 (8) Negotiate and enter into reciprocal contracts and
44 agreements with proper authorities of other states and
45 of the United States relating to and regulating the use of
46 roads and highways with reference to weights and types

47 of vehicles, registration of vehicles and licensing of opera-
48 tors, military and emergency movements of personnel
49 and supplies and all other matters of interstate or na-
50 tional interest;

51 (9) Locate and relocate primary and secondary roads
52 and to classify and reclassify and designate by number
53 the routes within the primary and secondary road sys-
54 tem;

55 (10) Create, extend or establish, upon petition of any
56 interested party or parties or on the commissioner's own
57 initiative, any new road or highway as may be found
58 necessary and proper;

59 (11) Exercise jurisdiction, control, supervision and au-
60 thority over local roads, outside the state road system, to
61 the extent determined by him to be expedient and prac-
62 ticable;

63 (12) Discontinue, vacate and close any road or high-
64 way, or any part thereof, the continuance and mainte-
65 nance of which are found unnecessary and improper,
66 upon petition and hearing, or upon investigation initiated
67 by the commissioner;

68 (13) Close any state road while under construction or
69 repair and provide a temporary road during the time of
70 such construction or repair;

71 (14) Adjust damages occasioned by construction, re-
72 construction or repair of any state road or the establish-
73 ment of any temporary road;

74 (15) Establish and maintain a uniform system of road
75 signs and markers;

76 (16) Fix standard widths for road rights-of-way,
77 bridges and approaches thereto and to fix and determine
78 grades and elevations therefor;

79 (17) Test and standardize materials used in road con-
80 struction and maintenance, either by governmental test-
81 ing and standardization activities or through contract by
82 private agencies;

83 (18) Allocate the cost of retaining walls and drainage
84 projects, for the protection of a state road or its right-of-
85 way, to the cost of construction, reconstruction, improve-
86 ment or maintenance;

87 (19) Acquire, establish, construct, maintain and oper-
88 ate, in the name of the commission, roadside recreational
89 areas along and adjacent to state roads and highways;

90 (20) Exercise general supervision over the construc-
91 tion and maintenance of airports and landing fields under
92 the jurisdiction of the West Virginia board of aeronautics,
93 of which the commissioner is a member, and to make a
94 study and general plan of a statewide system of airports
95 and landing fields;

96 (21) Provide traffic engineering services to municipali-
97 ties of the state upon request of the governing body of
98 any such municipality and upon such terms as may be
99 agreeably arranged;

100 (22) Institute complaints before the public service
101 commission or any other appropriate governmental
102 agency relating to freight rates, car service and move-
103 ment of road materials and equipment;

104 (23) Invoke any appropriate legal or equitable reme-
105 dies to enforce his orders, to compel compliance with re-
106 quirements of law and to protect and preserve the state
107 road and highway system or any part thereof;

108 (24) Make and promulgate rules and regulations for
109 the government and conduct of personnel, for the orderly
110 and efficient administration and supervision of the state
111 road program and for the effective and expeditious per-
112 formance and discharge of the duties and responsibilities
113 placed upon him by law;

114 (25) Delegate powers and duties to his appointees and
115 employees who shall act by and under his direction
116 and be responsible to him for their acts;

117 (26) Designate and define such construction and main-
118 tenance districts within the state road system as may be
119 found expedient and practicable;

120 (27) Contract for the construction, improvement and
121 maintenance of the roads;

122 (28) Have authority to comply with provisions of pres-
123 ent and future federal aid statutes and regulations, in-
124 cluding execution of contracts or agreements with and
125 cooperation in programs of the United States govern-

126 ment and any proper department, bureau or agency
127 thereof relating to plans, surveys, construction, recon-
128 struction, improvement and maintenance of state roads
129 and highways;

130 (29) Prepare budget estimates and requests;

131 (30) Establish a system of accounting covering and
132 including all fiscal and financial matters of the commis-
133 sion;

134 (31) Have authority to establish an advance right-of-
135 way acquisition revolving fund, a materials revolving
136 fund and an equipment revolving fund;

137 (32) Enter into contracts and agreements with and to
138 cooperate in programs of counties, municipalities and
139 other governmental agencies and subdivisions of the state
140 relating to plans, surveys, construction, reconstruction,
141 improvement, maintenance and supervision of highways,
142 roads, streets and other travel ways when and to the
143 extent determined by the commission to be expedient
144 and practical;

145 (33) Report, as provided by law, to the governor and
146 the Legislature;

147 (34) Purchase materials, supplies and equipment re-
148 quired for the state road program and system;

149 (35) Dispose of all obsolete and unusable and sur-
150 plus supplies and materials, which cannot be used ad-
151 vantageously and beneficially by the commission in the
152 state road program, by transfer thereof to other govern-
153 mental agencies and institutions or by exchange, trade
154 or sale thereof;

155 (36) Investigate road conditions, official conduct of
156 commission personnel and fiscal and financial affairs of
157 the commission and hold hearings and make findings
158 thereon or on any other matters within the jurisdiction
159 of the commission; and,

160 (37) Establish road policies and administrative prac-
161 tices.

Sec. 9. *Persons Required to Assist Commissioner.*—At
2 the request of the commissioner, the dean of the college
3 of engineering of West Virginia university, the director

4 of the experiment station of the university and the heads
5 of the several departments of science shall render to the
6 commissioner all necessary aid and assistance in the per-
7 formance of his duties, as the requirements of their
8 respective offices and positions will permit, without extra
9 charge or compensation for the service.

Sec. 10. *Hearings, Investigations and Proceedings; Evidence and Subpoenas; Contempt.*—In any hearing,
3 investigation or proceeding conducted by or before the
4 commission or commissioner, the evidence of witnesses
5 and the production of documentary evidence may be re-
6 quired at any designated place of hearing and summons
7 may be issued therefor by the commissioner or any mem-
8 ber of the commission. In case of disobedience to a sum-
9 mons or other process so issued, the commissioner, a
10 member of the commission or any party to the proceed-
11 ings may invoke the aid of any circuit court in requiring
12 the evidence and testimony of witnesses and the produc-
13 tion of papers, books and documents. And upon proper
14 showing, such court shall issue an order requiring such
15 persons to appear before the commissioner or commis-
16 sion, as the case may be, and produce all books and papers
17 and give evidence touching the matter in question. Any
18 person failing to obey such order may be punished by
19 such court as for contempt. A claim that any such testi-
20 mony or evidence may tend to incriminate the person
21 giving the same shall not excuse such witness from testi-
22 fying, but such witness shall not be prosecuted for any
23 offense concerning which he is compelled hereunder to
24 testify.

Sec. 11. *Road Maps; Reproduction and Distribution.*—
2 The commissioner shall prepare and currently maintain
3 a master road and highway map which will show (a) all
4 of the state roads and highways which have been located,
5 created and classified as provided by law, (b) the mileage
6 of each classification of roads and highways, and (c) the
7 status of improvement and, insofar as practicable, the
8 travel condition thereof. The commissioner may make
9 economical reproductions of such map from time to time
10 for official use and public information purposes.

2 Sec. 12. *Set-back Lines, Islands, Curb Separations,*
3 *Entrance Approaches, Walks and Parking.*—In the in-
4 terest of safety and the convenience, coordination and
5 control of pedestrian and vehicular traffic, the commis-
6 sion may from time to time cause surveys and findings to
7 be made as to the necessity and propriety of set-back
8 lines, traffic islands, curb separations, entrance ap-
9 proaches, sidewalks and other traffic control factors.
10 The commission may, pursuant to such surveys and find-
11 ings, promulgate and enforce reasonable rules and regula-
12 tions relating to and controlling the location, construc-
13 tion and maintenance of all such traffic control factors,
14 but shall not in any case unduly interfere with any
15 abutting property owner's entrance or access rights or
16 approaches to any road or highway unless with the con-
17 sent and voluntary action of such abutting property
18 owner or through appropriate proceedings in court in
19 the exercise of the right of eminent domain for determi-
20 nation of the lawful rights of the respective parties and
21 the damages, if any, to be assessed. The limitations of
22 this section on the commission's authority to regulate
23 entrance and access to roads and highways shall not
24 apply to freeways as defined in section thirty-nine of
25 article four of this chapter.

26 The commission may regulate and, when the safety
27 and convenience of the traveling public so require, may
28 prohibit parking of vehicles on and along roads and high-
ways and the rights-of-way thereof.

2 Sec. 13. *Purchase of Materials, Supplies and Equip-*
3 *ment.*—All materials, supplies and equipment required
4 for the state road program and system shall be purchased
5 and acquired by the commissioner through the depart-
6 ment of purchases, except as otherwise provided by law.
7 The director of purchases shall adopt rules and regula-
8 tions governing and controlling acquisitions and pur-
9 chases in accordance with accepted business practices so
10 that no persons shall be precluded from participating
11 and making sales thereof to the commission; shall estab-
12 lish and prescribe specifications, in all proper cases, for
materials, supplies and equipment to be purchased; shall

13 adopt and prescribe such purchase order, requisition or
14 other forms as may be required; shall negotiate for and
15 make purchases and acquisitions in such quantities, at
16 such times and under contract, in the open market or
17 through other accepted business methods and practices,
18 as may be practicable in accordance with general law;
19 shall determine whether to advertise for bids, to purchase
20 by means of sealed bids and competitive bidding or to
21 effect advantageous purchases through other accepted
22 methods and practices; and shall post in a public place in
23 the offices of the commission and the department of
24 purchases, available to the public during all business
25 hours, notices of all acquisitions and purchases to be made,
26 at least two weeks prior to making such purchases.

27 All purchases and acquisitions shall be made in con-
28 sideration and within limits of available appropriations
29 and funds and in accordance with applicable provisions
30 of article five, chapter five of this code, relating to ex-
31 penditure schedules and quarterly allotments of funds.

32 The director of purchases shall make available the
33 facilities and services of his department to the commis-
34 sioner in the purchase and acquisition of materials, sup-
35 plies and equipment and shall cooperate with the com-
36 missioner in all such purchases and acquisitions upon re-
37 quest of the commissioner. The actual expenses incurred
38 by the director of purchases in all such cases shall be
39 paid by the commissioner.

Sec. 14. *Disposition of Equipment and Materials; Trans-
fers, Trades and Sales; Inventory Reports.*—The commis-
sioner shall dispose of obsolete and unusable equipment,
surplus supplies and other unneeded materials, either by
transfer to other governmental agencies or institutions,
by exchange or trade, or by sale as junk or otherwise.
The commissioner shall adopt and promulgate rules and
regulations governing and controlling the disposition of
all such equipment, supplies and materials. He shall ad-
vertise, by newspaper publication or otherwise, the avail-
ability or sales of such disposable equipment, supplies and
materials and may sell same, in whole or in part, at public
auction, or may transfer, exchange or trade same (if by ex-

14 change or trade, then without advertising), in whole or
15 in part, as sound business practices may warrant under
16 existing circumstances and conditions. The commissioner
17 shall inventory all such disposable equipment, supplies
18 and materials from time to time as quantity and stocks
19 may warrant but shall make a complete semiannual
20 inventory thereof as of the thirty-first day of March and
21 the thirtieth day of September of each year. He may
22 report such inventories to the director of purchases whose
23 services and facilities shall be available to the commis-
24 sioner in making advantageous disposition of any part
25 or all of such disposable equipment, supplies and ma-
26 terials. Such inventories shall briefly describe the dis-
27 posable items, the date of purchase thereof, the vendor
28 to the commissioner, the purchase price paid therefor and
29 the commissioner's order number authorizing disposi-
30 tion thereof and shall indicate briefly the reason said
31 items are no longer needed or can no longer be used
32 by the commission. All such inventories shall be kept as
33 public records open to public inspection at the office of
34 the commissioner for a period of five years and may
35 thereafter be destroyed.

Sec. 15. *Other Laws Not Controlling.*—The provisions
2 of chapter twenty-five-a of this code shall not control or
3 govern the purchase, acquisition or disposition of any
4 equipment, materials or supplies by the commissioner, ex-
5 cept as provided in sections thirteen and fourteen of this
6 article. The commissioner may, in his discretion, resort to
7 applicable provisions of said chapter twenty-five-a and
8 to rules, regulations and practices of the director of pur-
9 chases in purchasing, acquiring or disposing of equip-
10 ment, supplies and materials.

Sec. 16. *Information on Vendors to Commissioner.*—
2 Every person, firm or corporation selling or offering to
3 sell to the commissioner, upon competitive bids or other-
4 wise, any materials, supplies or equipment shall submit
5 to the commissioner a verified statement disclosing the
6 following information:

7 (1) If the vendor be an individual, his name and resi-

8 dence address and, if he has associates or partners shar-
9 ing in his business, their names and residence addresses;

10 (2) If the vendor be a firm, the name and residence
11 address of each member, partner or associate of the firm;
12 and,

13 (3) If the vendor be a corporation, the name and busi-
14 ness address of the corporation; the names and residence
15 addresses of the president, vice-president, secretary,
16 treasurer and manager, if any, of the corporation; and
17 the names and residence addresses of each stockholder of
18 the corporation owning or holding twenty-five per cent
19 or more of the capital stock thereof.

20 The information so received by the commissioner shall be
21 kept in a register of vendors which shall be public record
22 and open to public inspection during regular business
23 hours at the commissioner's office. Such register shall be
24 alphabetically indexed by names of individuals, firms and
25 corporations. It shall be currently revised by including
26 therein information as to new vendors promptly upon the
27 receipt of such information by the commissioner and by
28 removing therefrom, at least semiannually as of the first
29 day of January and July of each year, information as to
30 vendors registered but not selling or offering to sell ma-
31 terials, supplies or equipment to the commissioner within
32 the twelve months next preceding such removal revision
33 date.

34 Any person, firm or corporation failing or refusing to
35 submit such verified statement as herein required shall
36 be ineligible to sell or offer to sell commodities to the
37 commissioner as provided in this article.

Article 4. State Road System; Primary and Secondary Roads.

Section

4. Interstate and international highway planning; integration of local roads.
19. Contracts for work and materials; advertising and bids; services by state road forces and prison labor.

Section 4. *Interstate and International Highways Plan-
2 ning; Integration of Local Roads.*—Within limits of funds
3 and personnel available therefor, the commissioner shall
4 study, consider and plan the state's part in any contem-

5 plated interstate or international system of roads and
6 highways, including superhighways, turnpikes, toll-roads
7 and other trunkline road developments and may plan and
8 attend conferences and meetings for discussion and pro-
9 motion of plans and programs relating thereto. In all
10 such study, consideration and plans, the commissioner
11 shall integrate the development of a state system of
12 feeder and local roads planned and designated to serve
13 most advantageously the economy and convenience of
14 the people of the state.

Sec. 19. *Contracts for Work and Materials; Advertising
and Bids; Services by State Road Forces and Prison Labor.*

3 —All work of construction and reconstruction of state
4 roads and bridges, and the furnishing of all materials and
5 supplies therefor, and for the repair thereof shall be done
6 and furnished pursuant to contract except that the com-
7 missioner shall not be required to award any contract for
8 work, which can be done advantageously, economically
9 and practicably by commission forces or prison labor and
10 by use of state road equipment, or for materials and sup-
11 plies, which are manufactured, processed or assembled by
12 the commissioner: *Provided, however,* That the commis-
13 sioner shall not be required to award any contract for
14 work, materials or supplies for an amount less than three
15 thousand dollars. In all such work, the commissioner
16 shall utilize state road forces or prison labor and state
17 road equipment and shall manufacture, process and as-
18 semble all such materials and supplies for such work
19 whenever and wherever the commissioner, in his dis-
20 cretion, finds such work and services advantageous, eco-
21 nomical and practicable in the state road program.

22 When the commissioner is about to construct, recon-
23 struct, or improve any road or highway, he shall cause
24 to be filed with the clerk of the county court, or of the
25 municipality, as the case may be, in which such road
26 lies, a certified copy of the plans and specifications there-
27 for, and a notice that the commissioner is about to enter
28 upon and proceed with the work in question. If the
29 work is to be done, or the materials therefor are to be
30 furnished by contract, the commissioner shall thereupon

31 advertise once each week for at least two successive
32 weeks in two newspapers of opposite politics, if there be
33 such, but if not, then in one newspaper published in
34 each county or municipality in which the road lies, and
35 once in at least one daily newspaper published in the city
36 of Charleston, and in such other journals or magazines
37 as may to the commissioner seem advisable, for sealed
38 proposals for the construction or other improvement of
39 such road, and for the furnishing of materials therefor,
40 accurately describing the same, and stating the time and
41 place for opening such proposals and reserving the right
42 to reject any and all proposals: *Provided, however,* That
43 whenever the estimated amount of any contract for work
44 or for materials or supplies is less than three thousand
45 dollars, the commissioner shall not be required to ad-
46 vertise the letting of said contract in newspapers as
47 above required, but may award the contract to the lowest
48 responsible bidder, when two or more sealed proposals
49 or bids have been received by him without such ad-
50 vertisement, but such contract shall not be so awarded
51 unless the bid of the successful bidder is three thousand
52 dollars or less. The commissioner shall have the power
53 to prescribe proper prequalifications of contractors bid-
54 ding on state road construction work. To all sealed pro-
55 posals there shall be attached the certified check of the
56 bidder or bidder's bond acceptable to the commissioner,
57 in such amount as the commissioner shall specify in the
58 advertisement, but not to exceed five per cent of the
59 aggregate amount of the bid; but such amount shall
60 never be less than five hundred dollars. Such proposals
61 shall be publicly opened and read at the time and place
62 specified in the advertisement, and the contract for such
63 work, or for the supplies or materials required therefor
64 shall, if let, be awarded by the commissioner to the low-
65 est responsible bidder for the type of construction se-
66 lected. In case all bids be rejected, the commissioner may
67 thereafter do the work with commission forces or with
68 prison labor, or may readvertise in the same manner as
69 before and let a contract for such work pursuant thereto.

Article 19. General Criminal Provisions.**Section**

4. Solicitations, assessments and receipts for political party funds unlawful; penalties.

Section 4. *Solicitations, Assessments and Receipts for Political Party Funds Unlawful; Penalties.*—It shall be unlawful for any commission member, the commissioner or any employee thereof, acting individually or by or through any organization, committee, corporation or other program or agency, to plan, promote, encourage or participate in any manner in the contribution, solicitation, assessment or receipt of any money, donation, contribution or gift of any kind or character for political party campaign or fund purposes or uses, when such money, donation, contribution or gift arises from, is related to, is measured by or is in any manner identified with a percentage, aliquot or fractional part or all of the daily, monthly or other salary, wages, pay or compensation of personnel and employees of the commission. A violation of the provisions of this section shall be cause for employment termination and dismissal of any commission member, the commissioner or employee guilty thereof and every such violation shall constitute a misdemeanor offense, upon conviction of which the guilty person shall be fined not exceeding one hundred dollars or imprisoned not exceeding thirty days, or be both fined and imprisoned within said limits.

CHAPTER 144

(Senate Bill No. 280—By Mr. Carey and Mr. Anderson)

AN ACT to amend and reenact section twenty-one, article ten, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the transfer of unneeded and unexpended funds by the sheriffs and treasurers of the various counties and/or the state sinking fund commission.

[Passed March 5, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 10. County Courts; General Authority and Duties as to Roads.**Section**

21. Existing bonded indebtedness to remain debt of property originally pledged as security; levies for payment; transfer of funds.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article ten, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 21. *Existing Bonded Indebtedness to Remain Debt of Property Originally Pledged as Security; Levies for Payment; Transfer of Funds.*—The bonded indebtedness incurred by the county and by its magisterial districts for road purposes shall remain the debt of the property originally pledged as security for the payment of the obligation. The county court shall impose upon the property in the county for county obligations, and in the magisterial district for district obligations, levies in the manner provided in sections seven and thirteen, article eight, chapter eleven, as amended, for the payment of the current requirements of principal and interest of the bonded indebtedness on and after July first, one thousand nine hundred thirty-three. All county courts, and other bodies acting in lieu thereof, are authorized to transfer to the general county fund any unexpended balances remaining in the county road and bridge funds or in district road funds, other than interest and sinking funds required for bonded indebtedness incurred for road purposes, and to transfer to the general county fund any unexpended balances of funds raised to pay the interest on and create sinking funds for any such bonded indebtedness where said bonded indebtedness has been fully paid off and discharged or where there remains no other bonded debt within such taxing district to which such unexpended balances might be applied, as well as any balance remaining in any special road fund created by law, and all moneys which may hereafter be paid into such funds through the collection of delinquent taxes or otherwise.

31 When there is in the state sinking fund commission to
32 the combined credit of all district road bonds in any
33 county issued prior to November eight, one thousand nine
34 hundred thirty-two, a sufficient amount to pay principal
35 and interest on all such outstanding road bonds, the state
36 sinking fund commission is authorized to apply from
37 said balance a sufficient amount to pay all outstanding
38 road bonds of said districts, together with the interest
39 thereon to maturity, and to remit any balances remaining
40 thereafter to the sheriff and treasurer of said county to
41 be credited to the general fund of the county.

CHAPTER 145

(House Bill No. 14—By Mr. Myles and Mr. Seibert)

AN ACT to amend and reenact section one, article nineteen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibited signs and other markings along, on, or over the right-of-way of any public road or highway.

[Passed March 6, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 19. General Criminal Provisions.

Section

1. Signs and other markings prohibited; penalty; removal; recovery of expenses.

Be it enacted by the Legislature of West Virginia:

That section one, article nineteen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 1. *Signs and Other Markings Prohibited; Penalty; Removal; Recovery of Expenses.*—No person shall
3 paint, mark, post, tack, nail, or otherwise affix any sign,

4 advertisement, notice, picture, drawing, emblem, poster,
5 printing, or writing, other than those placed and main-
6 tained in pursuance of law, on or to any stone, rock, tree,
7 fence, stump, post, pole, building, or other structure,
8 which is in or upon the right-of-way of any public road
9 or highway, including the road or highway itself, except
10 that the commissioner may provide for suitable road signs,
11 danger signals and other signs of informational nature.
12 No such sign or other marking shall be suspended over
13 the right-of-way of any public road or highway. These
14 prohibitions include, but are not limited to, such devices
15 which are intended to invite or draw attention of the pub-
16 lic to the candidacy of any person for any public office;
17 and any such device which exists in violation of the pro-
18 visions of this section shall constitute prima facie evidence
19 that the person whose candidacy appears thereon violated
20 this section: *Provided, however,* That the installation
21 and/or maintenance of newspaper, postal or mailboxes
22 shall not be prohibited or affected by this section.

23 Any person violating this section, whether as principal,
24 agent, or employee, shall be guilty of a misdemeanor, and,
25 upon conviction thereof, shall be punished by a fine of
26 not less than twenty-five nor more than one hundred
27 dollars; and such person shall be deemed guilty of a
28 separate offense for each day during any portion of which
29 any violation of this section is committed or continued.
30 Every such prohibited sign or other marking is hereby
31 declared to be a public nuisance. Upon receiving notice
32 of any violation of this section, the commissioner shall
33 cause the prohibited sign or other marking to be removed
34 within ten days and shall cause the appearance
35 of the property on which it was affixed to be restored,
36 as near as may be practicable, to its condition immediately
37 before such violation occurred. The commissioner shall,
38 in the name of the state, recover from the persons who
39 hereafter violate this section the amounts expended by
40 the state in removing the sign or other marking and in
41 restoring the appearance of the property on which it was
42 affixed.

43 The commissioner is empowered to remove any such

- 44 prohibited sign or other marking in place upon or over
45 any road taken over by him for construction or main-
46 tenance.

CHAPTER 146

(Senate Bill No. 2—By Mr. Carrigan and Mr. Martin)

AN ACT to amend and reenact section two, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the salaries of certain state officers.

[Passed January 10, 1957; in effect from passage. Approved by the Governor.]

Article 7. Compensation and Allowances.

Section

2. Salaries of certain state officers.

Be it enacted by the Legislature of West Virginia:

That section two, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

- Section 2. *Salaries of Certain State Officers.*—Effective
- 2 on and after the first Monday after the second Wednes-
3 day in January, one thousand nine hundred fifty-seven,
4 the salary of the governor shall be seventeen thousand
5 five hundred dollars per year.
- 6 The salary of the attorney general and superintendent
7 of free schools shall each be twelve thousand dollars
8 per year; the salary of the state auditor, secretary of
9 state, state treasurer and the commissioner of agriculture
10 shall each be eleven thousand dollars per year.
- 11 The salaries of each of the judges of the supreme court
12 of appeals shall be seventeen thousand five hundred
13 dollars per year.
- 14 Such salaries shall be paid out of the state treasury.

CHAPTER 147

(House Bill No. 3—By Mr. Seibert and Mr. Myles)

AN ACT to amend article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated and numbered two-a, fixing the compensation of certain appointive state officers.

[Passed March 9, 1957; in effect from passage. Approved by the Governor.]

Article 7. Compensation and Allowances.

Section

2-a. Salaries of certain appointive state officers.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated and numbered two-a, to read as follows:

Section 2-a. *Salaries of Certain Appointive State Officers.*—Notwithstanding any other provisions of this code to the contrary, on and after the effective date of this section, the annual salary of the following named appointive state officers shall be as follows:

The adjutant general eight thousand dollars; each member of the West Virginia board of probation and parole eight thousand two hundred dollars; the chief of the department of mines ten thousand dollars; the commissioner of banking nine thousand dollars; the commissioner of labor eight thousand dollars; the commissioner of motor vehicles eight thousand dollars; the superintendent of the department of public safety eight thousand dollars; the director of the budget nine thousand dollars; the director of conservation nine thousand dollars; the director of the department of veterans affairs eight thousand dollars; the

17 director of employment security nine thousand dollars;
18 the director of public assistance eight thousand dollars;
19 the director of purchases nine thousand five hundred dol-
20 lars; each member of the public service commission ten
21 thousand dollars, of which sum eight thousand dollars
22 shall be payable from the special fund collected from pub-
23 lic utilities under the provisions of section six, article
24 three, chapter twenty-four of this code, and two thousand
25 dollars from the special motor carrier fund collected from
26 motor carriers under the provisions of section six, article
27 six, chapter twenty-four-a of this code; the state compen-
28 sation commissioner eight thousand dollars; the tax com-
29 missioner ten thousand dollars; and the West Virginia
30 nonintoxicating beer commissioner eight thousand dollars.

CHAPTER 148

(Com. Sub. for Senate Bill No. 161—Originating in the
Senate Committee on Finance)

AN ACT to amend and reenact article six, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the discontinuance of the Denmark tuberculosis sanitarium and the establishment of the Denmark state hospital in lieu thereof for the maintenance and care of certain chronically ill patients.

[Passed March 6, 1957; in effect from passage. Approved by the Governor.]

Article 6. Denmark State Hospital.

Section

1. Location; management; superintendent.
2. Patients; admission; maintenance.

Be it enacted by the Legislature of West Virginia:

That article six, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *Location; Management; Superintendent.*—

2 The state tuberculosis sanitarium for colored persons,
3 heretofore established at Denmar, West Virginia, for the
4 care and treatment of persons of the negro race afflicted
5 with tuberculosis, shall be discontinued. There shall be
6 established at the same location, under the name of the
7 Denmar state hospital, a hospital for the chronically ill
8 which shall be managed, directed and controlled as pre-
9 scribed in article one, chapter twenty-five of this code.
10 The chief executive officer thereof shall be the superin-
11 tendent, who shall be a regularly qualified physician, shall
12 be a person of good executive ability, and shall be ap-
13 pointed by the governor by and with the advice and con-
14 sent of the Senate.

Sec. 2. *Patients; Admission; Maintenance.*—Any per-

2 son, a resident of West Virginia, other than an inmate
3 in a penal institution, and who is suffering a chronic ill-
4 ness, may upon proper order by the state board of control
5 be admitted or transferred to Denmar state hospital. The
6 board of control may charge each patient for his main-
7 tenance a sum not to exceed one dollar per day; but the
8 board may, whenever it is deemed just and expedient to
9 do so, exonerate any patient chargeable with such main-
10 tenance from the payment thereof, in whole or in part,
11 if it finds that he is unable to pay or that payment would
12 work an undue hardship upon him or upon those depen-
13 dent upon him, who, by law, are financially responsible
14 for him.

CHAPTER 149

(Senate Bill No. 183—By Mr. Bean, Mr. President)

AN ACT to amend and reenact section thirty-one, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to mentally diseased convicts.

[Passed March 6, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 5. The Penitentiary.**Section**

31. Mentally diseased convicts.

Be it enacted by the Legislature of West Virginia:

That section thirty-one, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 31. *Mentally Diseased Convicts.*—When any
2 convict in any of the state's prisons becomes mentally ill
3 before his or her term of sentence expires, it shall become
4 the duty of the warden or superintendent of such prison
5 to notify the director of mental health, who, in turn, shall
6 cause such convict to be sent to such mental institution
7 as the director may determine. It shall then be the duty
8 of the examining board of the hospital in which such con-
9 vict shall be confined to observe said convict for a period
10 of thirty days. If it be determined that said convict is
11 not mentally diseased, he or she shall forthwith be re-
12 turned to prison. If it be determined that said convict is
13 mentally diseased, then the examining board shall forth-
14 with forward to the clerk of the county court of the county
15 in which such person is a resident a detailed report of
16 their examination, which report shall immediately be pre-
17 sented to the mental hygiene commission of said county.
18 Such commission shall give full faith and credit to this
19 report, and, if satisfied that such person is mentally ill,
20 shall issue an order legally committing the mentally ill
21 person to the hospital making the report, as though the
22 person had been brought before it. All expenses incurred
23 in this proceeding, as well as the hospitalization of the
24 mentally ill person, shall be borne by the county of which
25 he is a resident.

26 When it is determined that such mentally diseased con-
27 vict has recovered, he or she shall be returned forthwith
28 to prison. Any time spent in such institution shall be
29 computed as part of the term for which he or she was
30 sentenced. If the sentence of such convict expires while
31 said convict is at such institution then, upon his or her

32 recovery, he or she shall be discharged from said hospital
33 in accordance with section three, article six, and section
34 one, article seven of chapter twenty-seven of the official
35 code.

CHAPTER 150

(House Bill No. 211—By Mr. Kidd)

AN ACT to amend and reenact section thirty-three, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment of committee of convict.

[Passed February 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 5. The Penitentiary.

Section

33. Committee of convict; appointment; bond.

Be it enacted by the Legislature of West Virginia:

That section thirty-three, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 33. *Committee of Convict; Appointment; Bond.*

2 —When a person is confined in the penitentiary of this or
3 any other state, or of the United States, under sentence
4 for one year or more, or to suffer death, the estate of
5 such convict in this state, if he have any, both real and
6 personal, shall, on the motion of any party interested, be
7 committed by the county court of the county in which his
8 estate or some part thereof may be, to a person selected
9 by such county court, who, after giving bond before the
10 county court in such penalty as it may prescribe, shall
11 have charge and management of such estate until the
12 convict is discharged from confinement or dies; and upon

13 such motion the county court shall appoint said com-
14 mittee, although the convict has no estate, either real or
15 personal, located in this state. In the event said convict
16 has no such estate, or his estate does not exceed one
17 thousand dollars, reference to a commissioner of accounts
18 shall not be necessary. All appointments of committees
19 heretofore made and decrees or judgments heretofore
20 awarded by any court of record in this state against or
21 on behalf of any convict shall not be considered invalid
22 for the reason that the convict had no such estate at the
23 time of the appointment of such committee.

CHAPTER 151

(House Bill No. 451—By Mr. White, of Harrison, and Mr. Garrett)

AN ACT to establish the West Virginia Stonewall Jackson memorial fund; to set forth the purpose for which such fund is to be established; to set up a board of trustees to administer the fund.

[Passed March 4, 1957; in effect from passage. Approved by the Governor.]

Section

1. West Virginia Stonewall Jackson memorial fund created.
2. Board of trustees created.

Be it enacted by the Legislature of West Virginia:

Section 1. *West Virginia Stonewall Jackson Memorial Fund Created.*—There is hereby created and established the West Virginia Stonewall Jackson memorial fund, which fund is to be composed of any moneys hereafter appropriated, given or bequeathed, together with any accruals from the income from the fund or repayments thereto. The purpose of this fund is to memorialize that great American and confederate general, "Stonewall" Jackson, through a program of education initiated by Stonewall Jackson Memorial, Incorporated, including both

11 essay contests and scholarships. The benefits of this fund
12 shall accrue only to West Virginians.

Sec. 2. *Board of Trustees Created.*—There is hereby
2 created a board of trustees, who shall serve without pay
3 or personal expenses, to administer the West Virginia
4 Stonewall Jackson memorial fund.

5 The trustees shall be the state superintendent of free
6 schools, the president of the Stonewall Jackson Memorial,
7 Incorporated, and one member to be appointed by the gov-
8 ernor. The board of trustees shall be vested with the
9 power to administer this act in its entirety; to prescribe
10 the rules and regulations governing the essay contests and
11 the awarding of scholarships from the West Virginia
12 Stonewall Jackson memorial fund. They are hereby di-
13 rected to receive any appropriation, gift or bequest here-
14 after made, and to designate a bank in West Virginia as a
15 depository for the fund, and are further directed to invest
16 said fund in such sound securities as they deem advisable
17 in line with good business procedure; and they are ex-
18 pressly prohibited from spending any part of the principal
19 of this fund, it being the intent of this act that only the
20 income from said fund shall be used in carrying out the
21 purposes of this act. The board of trustees shall require,
22 insofar as possible, the repayment of all scholarship funds
23 by the recipients thereof, under such terms as circum-
24 stances may justify, and any money so repaid shall become
25 part of the principal of the fund.

CHAPTER 152

(Senate Bill No. 305—By Mr. Bean, Mr. President and Mr. Carrigan)

AN ACT to amend article eleven, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting section one of said article, and by adding to said article a new section, to be designated section two, all relating to the creation

of an agency for the receipt and distribution of surplus property.

[Passed March 1, 1957; in effect from passage. Approved by the Governor.]

Article 11. Surplus Property Agency.

Section

1. Creation and authority of surplus property agency.
2. Surplus property agency a division of the state department of purchases.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting section one of said article, and by adding to said article a new section, to be designated section two, all to read as follows:

Section 1. *Creation and Authority of Surplus Property Agency.*—There is hereby established an agency to be known as the “State Agency for Surplus Property.” This agency shall have exclusive authority to receive from the department of defense and any other federal department or agency such equipment, materials, books and other supplies as may be declared excess and surplus property. The agency also shall have exclusive authority to warehouse and distribute all such excess and surplus property so received to all recipients within the state as may now be or hereafter become eligible therefor under federal laws or regulations.

Sec. 2. *Surplus Property Agency a Division of the State Department of Purchases.*—The state department of purchases is hereby designated as a sole agency for the purposes of this article, and the director of purchases shall be the director of the state agency for surplus property. As such, he shall have sole authority to: (a) make such reasonable rules and regulations, require such certifications and agreements by eligible recipients of surplus property, and employ such persons as may be necessary for the accomplishment of the purposes of this article;

11 (b) make such certifications and enter into such agree-
12 ments or understandings for and in the name of the state
13 (including cooperative agreements with federal agencies)
14 as may be appropriate or required by federal law or regu-
15 lations in carrying out the functions hereby authorized;
16 and (c) require such reports and make such investiga-
17 tions and take such action as may be necessary for the
18 accomplishment of the purposes of this article.

CHAPTER 153

(House Bill No. 129—By Mr. Brotherton and Mr. Deutsch)

AN ACT to amend and reenact section six, article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to forms and instructions for assessors and providing penalties for violations.

[Passed February 12, 1957; in effect from passage. Approved by the Governor.]

Article 1. Supervision.

Section

6. Forms and instructions for assessors.

Be it enacted by the Legislature of West Virginia:

That section six, article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 6. *Forms and Instructions for Assessors.*—The
2 tax commissioner shall prepare and forward to the
3 assessors such printed forms for the personal property
4 books, and the land books, and such lists of taxable sub-
5 jects to be furnished by the assessors to persons charge-
6 able with taxes, as will procure a perfect assessment of
7 all the persons and property, both real and personal, in
8 this state subject to taxation, and shall have full power

9 to alter or change any and all forms and books from time
10 to time, so as to procure a just and equal assessment of
11 all taxable property: *Provided, however,* That county
12 assessors may, with the approval of the tax commissioner,
13 use such printed forms as may be necessary in the use of
14 mechanical devices designed to facilitate the work of the
15 assessor: *Provided further,* That the county court is here-
16 by authorized to purchase and pay out of the county
17 treasury for such printed forms for use by the assessor.
18 The tax commissioner shall also, by letter or printed cir-
19 cular, give such instructions to the assessors respecting
20 their duties as may seem to him judicious; and if any
21 assessor fail to obey such instructions, so far as they are
22 not contrary to law, he shall forfeit not less than one hun-
23 dred dollars nor more than five hundred dollars, and, upon
24 being convicted, shall be removed from office.

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CHAPTER 154

(House Bill No. 157—By Mr. Brotherton)

AN ACT to amend and reenact section seven, article two, chap-
ter eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to state and local
meetings of assessors.

[Passed February 12, 1957; in effect ninety days from passage. Approved by the
Governor.]

Article 2. Assessors.

Section

7. State and local meetings.

Be it enacted by the Legislature of West Virginia:

That section seven, article two, chapter eleven of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:

2 Section 7. *State and Local Meetings.*—There shall be an
3 annual meeting of the assessors, which meeting the
4 assessors of the several counties of the state shall attend.
5 The date and place of such meeting shall be fixed by the
6 tax commissioner and due notice thereof shall be given
7 to the assessors of the state. The tax commissioner shall
8 prepare a program of matters pertaining to assessments
9 and work of the assessors to be discussed at such meeting
10 and he shall attend and be ex officio chairman of the same.
11 The meeting shall continue for a period of at least two days
12 but not more than four days. The actual and necessary ex-
13 pense incurred by any assessor and not more than two
14 deputies to be designated by him in attendance at such
15 meeting shall be paid out of the county treasury of the
16 county of the assessor and deputies so attending. Before
17 such payment, however, the assessor shall file an itemized
18 statement, which shall be sworn to, of his actual and
19 necessary expenses, with the clerk of the county court.

20 In addition to the meeting hereinbefore provided for,
21 there shall be at least two meetings of each assessor and
22 his deputies between the first day of the assessment year
23 and the twentieth day of June, of the current year, at such
24 time and place as the assessor shall designate, of which
25 meeting all deputies shall have notice, for the purpose of
26 securing uniform valuation of property, both real and
27 personal, throughout the entire county, according to the
28 true and actual value. The last meeting shall be held after
29 the work of listing property has been completed, at which
30 meeting all the lists shall be thoroughly gone over, and,
31 if found to be erroneous, either in the amount of property,
32 real or personal, assessed to any person, firm or corpora-
33 tion, or in the value given to any item of property by the
34 taxpayer shall be revised and corrected by placing on such
35 list the omitted property and giving to it, as well as to
36 any property that has been listed, but which has been
37 incorrectly valued, the true and actual value thereof ac-
38 cording to the rule prescribed by law and by omitting
property improperly listed.

CHAPTER 155

(Senate Bill No. 137—By Mr. Carey and Mr. Anderson)

AN ACT to amend and reenact section ten, article two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the expenses of assessors.

[Passed February 28, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 2. Assessors.

Section

10. Expenses of assessors.

Be it enacted by the Legislature of West Virginia:

That section ten, article two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 10. *Expenses of Assessors.*—The county court of
2 each county shall allow the assessor or any deputy asses-
3 sor, when engaged in the assessment of property for the
4 purpose of taxation, seven cents per mile for each mile
5 the assessor or deputy assessor is required to drive his
6 personally owned car. Every assessor shall file monthly,
7 under oath, a full and accurate account of all his actual
8 and necessary mileage mentioned in this section, sup-
9 ported by verified accounts for his deputies before pay-
10 ment thereof shall be allowed by the county court.

CHAPTER 156

(Senate Bill No. 300—By Mr. Bean, Mr. President)

AN ACT to amend and reenact section nine, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to property exempt from taxation.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 3. Assessments Generally.**Section****9. Property exempt from taxation.**

Be it enacted by the Legislature of West Virginia:

That section nine, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 9. *Property Exempt from Taxation.*—All property, real and personal, described in this section, and to the extent herein limited, shall be exempt from taxation, that is to say: Property belonging to the United States, other than property permitted by the United States to be taxed under state law; property belonging exclusively to the state; property belonging exclusively to any county, district, city, village, or town in this state, and used for public purposes; property located in this state belonging to any city, town, village, county or any other political subdivision of another state, and used for public purposes; property used exclusively for divine worship; parsonages, and the household goods and furniture pertaining thereto; mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship, or for the purpose of paying indebtedness thereon; cemeteries; property belonging to, or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities, money and furniture; public and family libraries; property used for charitable purposes, and not held or leased out for profit; all real estate not exceeding one-half acre in extent, and the buildings thereon, and used exclusively by any college or university society as a literary hall, or as a dormitory or club room, if not leased or otherwise used with a view to profit; all property belonging to benevolent associations, not conducted for private profit; property belonging to any public institution for the education of the deaf,

33 dumb or blind, or any hospital not held or leased out for
34 profit; house of refuge, lunatic or orphan asylum; homes
35 for children or for the aged, friendless or infirm, not con-
36 ducted for private profit; fire engines and implements for
37 extinguishing fires and property used exclusively for the
38 safekeeping thereof, and for the meetings of fire com-
39 panies; and all property on hand to be used in the sub-
40 sistence of livestock on hand at the commencement of the
41 assessment year, household goods to the value of two
42 hundred dollars, dead victuals laid away for family use
43 and any other property or security exempted by any
44 other provision of law; but no property shall be exempt
45 from taxation which shall have been purchased or pro-
46 cured for the purpose of evading taxation, whether tem-
47 porarily holding the same over the first day of the assess-
48 ment year or otherwise: *Provided, however,* That the
49 property, both real and personal, which is exempt from
50 taxation by this section shall be entered upon the asses-
51 sor's books, together with the true and actual value
52 thereof, but no taxes shall be levied upon the same or
53 extended upon the assessor's books.

54 Notwithstanding any other provision of this section,
55 however, no language herein shall be construed to exempt
56 from taxation any property owned by, or held in trust
57 for, educational, literary, scientific, religious or other
58 charitable corporations or organizations, unless such
59 property is used primarily and immediately for the pur-
60 poses of such corporations or organizations.

CHAPTER 157

(House Bill No. 287—By Mr. Whaley)

AN ACT to amend and reenact section one, article eleven, chap-
ter eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to inheritance and
transfer taxes.

[Passed March 5, 1957; in effect ninety days from passage. Approved by the
Governor.]

Article 11. Inheritance and Transfer Taxes.**Section****1. When imposed.**

Be it enacted by the Legislature of West Virginia:

That section one, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *When Imposed.*—A tax, payable into the
2 treasury of the state, shall be imposed upon the transfer,
3 in trust, or otherwise, of any property, or interest therein,
4 real, personal, or mixed, if such transfer be: (a) By will
5 or by laws of this state regulating descent and distribu-
6 tion from any person who is a resident of the state at
7 the time of his death and who shall die seized or possessed
8 of property; (b) by will or by laws regulating descent and
9 distribution of property within the state, or within its
10 taxing jurisdiction, and the decedent was a nonresident
11 of the state at the time of his death; (c) by a resident,
12 or by a nonresident owning taxable property within the
13 state or within its jurisdiction, by deed, grant, sale or
14 gifts, made in contemplation of the death of the grantor,
15 vendor, or donor, or intended to take effect in possession
16 or enjoyment at or after such death, or where any change
17 in the use or enjoyment of property included in such
18 transfer, or the income thereof, may occur in the life-
19 time of the grantor, vendor, or donor, by reason of any
20 power reserved to, or conferred upon, the grantor, vendor,
21 or donor, either solely or in conjunction with any person,
22 or persons, to alter, or to amend, or to revoke any transfer,
23 or any portion thereof, as to the portion remaining at the
24 time of death of the grantor, vendor, or donor, thus sub-
25 ject to alteration, amendment or revocation. If any one
26 of the transfers mentioned in this subdivision is made for
27 valuable consideration, the portion of the transfer for
28 which the grantor, or vendor receives equivalent mone-
29 tary value is not taxable, but the remaining portion there-
30 of is taxable. Every transfer by deed, grant, sale or gift,
31 made within three years prior to the death of the grantor,
32 vendor, or donor, without adequate valuable considera-

33 tion, shall be presumed to have been made in contempla-
34 tion of death within the meaning of this subdivision;
35 (d) by any person who shall transfer any property which
36 he owns, or shall cause any property to which he is ab-
37 solutely entitled to be transferred to or vested in himself
38 and any other person jointly, with the right of survivor-
39 ship, in whole or in part, in such other person, a transfer
40 shall be deemed to occur and to be taxable under the
41 provisions of this article upon the vesting of such title
42 in the survivor: *Provided, however,* That this subsection
43 shall not apply to bank accounts payable to the class
44 designated in section two(a) in a total amount of twenty-
45 five hundred dollars or less: *And provided further,* That,
46 in the case of a surviving spouse, not more than fifty per
47 centum of the value of any transfer mentioned in this
48 subsection (d) shall be included and taxed in any such
49 decedent's estate; (e) to any person deriving an estate
50 in property, coupled with a power of appointment, in
51 which event such estate shall be taxed as other limited
52 estates; and whenever any person shall exercise a power
53 of appointment derived from any disposition of property
54 made, which appointment when made shall be deemed
55 a transfer taxable under the provisions of this article,
56 in the same manner as though the property to which
57 such appointment relates belonged absolutely to the
58 donee of such power and had been bequeathed or de-
59 vised by such donee by will; and whenever any person
60 possessing such a power of appointment so derived shall
61 omit or fail to exercise the same within the time pro-
62 vided therefor in whole or in part, a transfer taxable
63 under the provisions of this article shall be deemed to
64 take place to the extent of such omission or failure, in
65 the same manner as though the person thereby becoming
66 entitled to the possession or enjoyment of the property
67 to which such power related had succeeded thereto by
68 a will of the donee of the power failing to exercise such
69 power, and shall take effect at the time of such omission
70 or failure: *Provided, however,* That in either of which
71 events the tax commissioner, on the application of any
72 person in interest or upon his own motion, may, after due

73 notice to the known persons interested, apportion such
74 taxes, first, as to the interest of the donee of the power
75 of appointment, and second, to the remainder or rever-
76 sionary interests of others at the highest probable rate
77 applicable thereto, and shall make his certificate accord-
78 ingly, which shall be forwarded and disposed of in the
79 same manner as other certificates herein provided for.
80 The portion of any such taxes apportioned as to the re-
81 mainder or reversionary interest shall be paid out of the
82 corpus of the estate in like manner as other assessments
83 as if such interest had vested in possession; and, upon
84 such assessment and payment of the tax the matter shall
85 become a finality; (f) by the terms of any annuity or
86 investment contracts, or similar type or form of contract
87 or policy, and shall be on the amount payable under any
88 such contract or policy, on account of a death, to named
89 beneficiaries, to his estate or in trust for the benefit of
90 any individual or individuals, including (1) all such poli-
91 cies or contracts hereafter issued, and (2) all such policies
92 or contracts now in force: *Provided, however,* That there
93 shall be exempt from the provisions of this subsection the
94 proceeds of such contracts or policies: (a) When the
95 premiums on such policies or contracts were paid by the
96 beneficiary named in such policy or contract, to the extent
97 only of the ratio of premiums paid by the beneficiary
98 bear to the total premiums paid; (b) when the proceeds
99 of such policies or contracts have been assigned by the
100 decedent for a valuable consideration either in form abso-
101 lute or as collateral security for the payment of a bona
102 fide indebtedness of the decedent, to the extent that the
103 proceeds thereof shall be necessary to pay and satisfy such
104 indebtedness. It is provided, however, that no annuity
105 settlement or arrangement accepted in lieu of cash settle-
106 ment of a life insurance policy, whereby the proceeds of
107 such policy are payable in instalments, shall be subject
108 to taxation under the provisions of this article, nor shall
109 the provisions of this article apply to the proceeds of any
110 policy of life or accident insurance payable to a named
111 beneficiary or beneficiaries whether directly or in trust
112 or otherwise.

113 Where annuity or investment contracts or policies are
114 left by a decedent in such manner that the proceeds
115 thereof cannot be subjected to the payment of his debts,
116 and where the proceeds of such annuity or investment
117 contracts are received by beneficiaries thereof, the fact
118 that the decedent may have been insolvent and that a
119 portion of his debts may remain unpaid shall not affect
120 the liability for inheritance tax on such proceeds.

CHAPTER 158

(Senate Bill No. 332—By Mr. Bean, Mr. President and Mr. Carrigan)

AN ACT to amend section five, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to determination of market value for inheritance and transfer tax purposes.

[Passed March 7, 1937; in effect from passage. Approved by the Governor.]

Article 11. Inheritance and Transfer Taxes.

Section

5. Determination of market value.

Be it enacted by the Legislature of West Virginia:

That section five, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended to read as follows:

Section 5. *Determination of Market Value.*—The market value of property is its actual market value after deducting debts and encumbrances for which the same is liable, and to the payment of which it shall actually be subjected. In fixing such market value, allowances shall not be made for debts incurred by the decedent, or encumbrances made by him, unless such debts or encumbrances were incurred or created in good faith for an

9 adequate consideration, nor for any debt in respect where-
10 of there is a right to reimbursement from any other estate
11 or person, unless such reimbursement from any other
12 estate or person cannot be obtained.

13 For the purpose of the tax there shall be deducted from
14 the market value of the property transferred the value at
15 which it was assessed for any inheritance or transfer tax
16 paid to the state of West Virginia upon a transfer to the
17 decedent at any time within three years prior to the
18 death of the decedent. That part of the value of property
19 which was allowed as an exemption and upon which the
20 tax was not actually measured and paid shall not be de-
21 ducted as previously taxed property. This paragraph shall
22 apply only to transferees designated in subdivisions (a)
23 and (b) of section two of this article.

CHAPTER 159

(Com. Sub. for Senate Bill No. 49—Originating in the
Senate Committee on the Judiciary)

AN ACT to amend and reenact section nine, article eleven,
chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to a lien or
indebtedness created by nonpayment of inheritance and
transfer taxes, and limitation upon the collection thereof.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the
Governor.]

Article 11. Inheritance and Transfer Taxes.

Section

9. Lien for tax; limitation upon collection.

Be it enacted by the Legislature of West Virginia:

That section nine, article eleven, chapter eleven of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted to read as follows:

Section 9. *Lien for Tax; Limitation upon Collection.*—

2 All such taxes upon any transfer, and the interest that
3 may accrue thereon, shall, until paid, be and remain a
4 charge and lien upon the property transferred, superior
5 to any lien created after such transfer, and no title shall
6 vest or be transferred as to any such property, except
7 subject to the lien for such taxes, and no such property
8 shall be transferred or delivered, in whole or in part,
9 until the payment into the treasury of the state of the
10 amount of such tax: *Provided, however,* That this re-
11 striction shall not apply to the transfer or delivery of
12 twenty-five hundred dollars or less from the balance of a
13 joint bank account of which the decedent was a co-owner
14 when such transfer or delivery is to the surviving co-
15 owner or co-owners and such co-owner or co-owners are
16 within the class designated in section two (a) of this
17 article. The person to whom the property is transferred,
18 if he shall receive the same before the tax thereon is paid,
19 and the executors, administrators and trustees having
20 charge of every estate so transferred, shall be personally
21 liable for such tax and interest until its payment: *Pro-*
22 *vided further,* That such lien and the tax and interest
23 represented thereby shall not be enforceable or collectible
24 either against the property or from any person whatso-
25 ever after the expiration of ten years from and after the
26 death of the decedent whose property is subject to tax
27 under the provisions of this article, whether there has been
28 a qualification or not upon the estate of the decedent. The
29 limitation aforesaid shall apply regardless of whether or
30 not a personal representative has been appointed or
31 qualified upon the estate of the decedent: *Provided*
32 *further,* That the limitation of ten years prescribed by
33 this section shall not be construed to apply to any suit or
34 proceeding now pending and undetermined, commenced
35 prior to the effective date of this act, for the enforcement
36 of any such lien otherwise legally enforceable but for said
37 limitation.

CHAPTER 160

(Com. Sub. for House Bill No. 86—Originating in the House Committee on Finance)

AN ACT to repeal sections one through sixty-six, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof thirty-one new sections, to be designated sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty and thirty-one, relating to licenses on businesses, activities, trades and employments.

[Passed March 9, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 12. License Taxes.

Section

1. Definitions.
2. License taxes levied.
3. Slot machines and automatic devices.
4. Circuses, carnivals and other public shows.
5. Trading stamps.
6. Fortune telling.
7. Junk dealers and their agents.
8. Hawkers and peddlers.
9. Pawnbrokers.
10. Itinerant vendors.
11. Theatres and public shows.
12. Collection agencies.
13. Employment agent.
14. Bowling alleys, billiard, pool or bagatelle tables.
15. Application for and issuance of licenses; evidence of license; fee.
16. Conditions precedent to doing business.
17. Licenses coextensive with the state.
18. Effect of state license.
19. Effect of state license within municipalities.
20. Time for which licenses granted.
21. Injunction against collection of license tax; payment under protest.
22. Exhibition of licenses.
23. Licenses, a personal privilege.
24. Effect of change in partners or name of firm.
25. Collection by distraint.
26. Injunction against unlicensed business.
27. Additional penalties when business transacted without license.

28. Collection of back taxes.
29. Collection by action or suit.
30. Criminal liability for violation of provisions of article; jurisdiction.
31. Interpretation of preceding sections.

Be it enacted by the Legislature of West Virginia:

That sections one through sixty-six, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that thirty-one new sections, to be designated sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty and thirty-one be enacted, to read as follows:

Section 1. *Definitions.*—When used in this article the
2 term “person” shall mean and include natural persons,
3 partnerships, associations, corporations, and all other
4 organizations or groups by means of which any of the
5 hereinafter specified businesses, activities, trades or em-
6 ployments are engaged in or prosecuted.
7 The term “tax commissioner” shall mean the tax com-
8 missioner.

Sec. 2. *License Taxes Levied.*—No person shall, without
2 a license, engage in or prosecute, within the state of West
3 Virginia, any of the businesses, activities, trades or em-
4 ployments named in the following sections of this article.
5 The license taxes hereinafter specified are hereby levied
6 on every person engaging in or prosecuting, within this
7 state, any such businesses, activities, trades or employ-
8 ments.

Sec. 3. *Slot Machines and Automatic Devices.*—The
2 annual license fee to keep or maintain an automatic bag-
3 gage or parcel checking machine or device which is used
4 for the storage of baggage or parcels of any character,
5 shall be fifty cents for each section of any such device
6 which is operated on the coin-in-the-slot principle; the
7 annual license fee to keep or maintain any automatic
8 toilet locker or device shall be fifty cents for every such

9 locker or device; the annual license fee to keep or main-
10 tain any other automatic penny slot machine or device,
11 which is not a gambling device under any law of this
12 state, shall be at the rate of two dollars for each machine
13 or device kept or maintained by the licensee; the annual
14 license fee to keep or maintain any other automatic slot
15 machine or device, which is not a gambling device as
16 aforesaid, shall be at the rate of five dollars for each such
17 machine or device kept or maintained by the licensee.

18 The term "slot machine" when used in this section
19 shall not be deemed to mean or include any pay telephone
20 or postage stamp vending machine operated on the coin-
21 in-the-slot principle.

22 Application for the license required herein shall contain
23 the number of such machines or devices to be kept or
24 maintained by the licensee within this state during the
25 ensuing license year. One license certificate shall be
26 issued to each person keeping or maintaining such ma-
27 chines or devices as aforesaid, but the tax commissioner
28 shall issue to any such licensee a decalcomania stamp or
29 other evidence of license for each such machine or device,
30 which decalcomania stamp or other evidence of license
31 shall be securely attached to the side or front of each
32 such machine or device properly protected and plainly
33 visible. Every such machine or device shall also bear on
34 the side or front thereof so as to be plainly visible the
35 name and address of the person keeping or maintaining
36 such machine or device.

37 The proprietor or owner of the business conducted in
38 the place where such machine is kept or maintained is
39 charged with the responsibility of satisfying himself that
40 such decalcomania stamp or other evidence of license,
41 is so attached before permitting its installation in his
42 place of business and in the event the owner of any auto-
43 matic machine or device refuses, neglects or fails to pay
44 the license fee due upon any such machine or device,
45 then the proprietor or owner of the business conducted
46 in the place where such machine is installed, operated
47 or maintained shall be liable for the payment of such
48 license fee, and upon his refusal or failure to pay such

49 fee the tax commissioner or his agents may take such
50 machine or device into possession and deliver the same
51 to the sheriff of the county in which such machine or
52 device is found, or the sheriff of such county on his own
53 initiative or upon order or direction of the tax commis-
54 sioner, or his agents, may take such machine or device
55 into possession, and in either event said machine or de-
56 vice shall be impounded until such license fee is paid;
57 in the event the license fee and penalties are not paid
58 to such sheriff within ten days after the date of such
59 impounding, then the sheriff shall sell such machine or
60 device in the manner provided by law for the sale of
61 personal property for taxes, and from the proceeds there-
62 of shall discharge and pay the license fee due on such
63 machine or device and his costs, including costs of im-
64 pounding, storage, penalties and other fees due the state
65 and the sheriff; and the balance, if any there be, shall be
66 forfeited to the state.

67 Except where the principal business of the operation
68 of the store is the operation of such machines or devices,
69 no license fee shall be required of persons keeping or
70 maintaining such machines or devices owned by them
71 in their own licensed stores: *Provided, however,* That
72 any person exempt from such license shall obtain from
73 the tax commissioner a license receipt, decalcomania
74 stamp, or other evidence of exemption, at a cost not to
75 exceed fifty cents each, showing that he is so exempt,
76 which shall be effective for the period as provided for
77 annual licenses in this article; but to obtain such license
78 receipt or other evidence of exemption, he shall make an
79 affidavit and produce such other evidence as to the fact
80 entitling him to such exemption as the tax commissioner,
81 in his discretion, may require, which shall be on a form
82 to be prescribed by the tax commissioner.

Sec. 4. *Circuses, Carnivals and Other Public Shows.*--

2 The license to exhibit a circus or menagerie, a circus and
3 menagerie combined, wild west show, or other itinerant
4 show not exhibited in a theatre, opera house or other
5 permanent place for public shows, shall be based upon
6 the number of railroad cars or motor trucks used to trans-
7 port the property or equipment of such shows, but not

8 including railroad cars or motor trucks used to transport
9 the personnel thereof. If railroad cars are used the fee
10 shall be four dollars for each car for each day which any
11 performance is given; if motor trucks are used the fee
12 shall be three dollars for each truck for each day on which
13 any performance is given.

14 The license fee to exhibit a street or other carnival
15 shall be five dollars a week for each entertainment, per-
16 formance or exhibition given at or in the vicinity of any
17 such carnival. Each such entertainment, performance or
18 exhibition shall require a separate license, whether or
19 not shown under the same canvas and whether or not
20 exhibited for additional compensation; and upon any
21 such entertainment, performance or exhibition being con-
22 cluded, so that an additional fee for admission is charged.
23 an additional license fee shall be required for any further
24 or additional entertainment, performance or exhibition.
25 To operate any riding device of any kind at or in the
26 vicinity of any street or carnival show, the fee shall be
27 ten dollars a week for each such device.

28 To keep or maintain any concession stand selling service,
29 goods, wares or merchandise, such as food, soft drinks,
30 ice cream, candy floss and the like, at or in the vicinity
31 of such street or carnival show, the fee shall be five dol-
32 lars a week for each such concession. To maintain any
33 concession stand such as ball games, bingo, cane rack,
34 penny pitch-till-you-win, striking machine, weighing ma-
35 chine, shooting gallery, artful dodger, bumper, fish pond,
36 dart game, or other legitimate games of skill, none of
37 which shall be controlled by the operator, at or in the
38 vicinity of any street or carnival show, the fee shall be
39 ten dollars a week for each such concession. To operate
40 or maintain a candy wheel or any other legitimate mer-
41 chandise wheels, when operated without control of the
42 operator, shall be twenty-five dollars a day. To operate
43 or maintain rides of all kinds shall be ten dollars each
44 a week: *Provided, however,* That such games as roll
45 downs, blowers, spinners, swinging ball, creepers, race
46 tracks, spot the spot, and all other games controlled by
47 the operator are hereby forbidden and no license shall
48 be granted to any circus, show or street carnival where

49 such games are operated: *Provided further*, That no cir-
50 cus, show or street carnival shall be licensed which has
51 any gypsy fortune tellers or gypsies connected therewith
52 in any manner.

53 The provisions of this section shall not apply to any
54 educational, literary, dramatic, musical or benevolent so-
55 ciety, or volunteer fire companies, not conducted for pri-
56 vate profit, where such exhibitions are confined to one
57 county, unless professional or paid talent, other than
58 director, is employed in such exhibitions.

Sec. 5. *Trading Stamps*.—The annual license fee to
2 sell or offer for sale merchants' trading stamps, premium
3 stamps or stamps or certificates of like nature, or to under-
4 take to redeem such stamps or certificates in money or
5 goods, shall be one hundred seventy-five dollars: *Pro-*
6 *vided, however*, That this section shall not apply to any
7 coupon or similar device issued and redeemed by a manu-
8 facturer or packer.

9 The license imposed by this section shall not be co-
10 extensive with the state, but a separate license shall be
11 required for each county in which the licensee operates.

Sec. 6. *Fortune Telling*.—The annual license to act
2 as a fortune teller, palmist, phrenologist, spiritualist, me-
3 dium, clairvoyant, mind reader, or any other person who
4 performs the art or profession of telling the past or fore-
5 casting the future shall be two hundred dollars.

Sec. 7. *Junk Dealers and Their Agents*.—(a) The
2 term "junk" as used in this section shall mean old or
3 scrap gold, copper, brass, rope, rags, batteries, paper, rub-
4 ber, automobile parts, iron, steel and other old scrap fer-
5 rous or non-ferrous metals.

6 The term "junk dealers" shall include all persons en-
7 gaged in the business of buying or selling junk as herein-
8 above defined.

9 The term "junk dealer's agents" shall include all per-
10 sons who buy or sell junk as hereinbefore defined for or
11 on behalf of a junk dealer, as hereinabove defined, but
11a the term "junk dealer's agent" shall not be construed to
12 include any persons regularly employed upon a salary by

13 a regularly licensed junk dealer engaged in such busi-
14 ness within the state of West Virginia.

15 The term "itinerant junk collector" shall include only
16 such persons who gather junk from place to place with
17 the aid of a cart or vehicle hand drawn or propelled, who
18 have no fixed place of business.

19 The term "nonresident junk dealer" or "nonresident
20 junk dealer's agent" shall include all persons who act as
21 junk dealers or junk dealer's agents who are nonresidents
22 of West Virginia, and all firms so engaged whose mem-
23 bers are nonresidents of West Virginia and all corpora-
24 tions which have not been admitted to hold property and
25 transact business in the state of West Virginia.

26 (b) No person within the state of West Virginia shall
27 engage in the business of junk dealer, junk dealer's agent
28 or itinerant junk collector without a state license there-
29 for, which license shall be issued as provided in this arti-
29a cle: *Provided, however,* That no resident license shall be
30 issued to any junk dealer, junk dealer's agent or itinerant
31 junk collector who has not been a resident of the state
32 of West Virginia for a period of at least one year prior
33 to the application for such license.

34 (c) No corporation or firm shall engage in the business
35 of junk dealer or junk dealer's agent in the state of West
36 Virginia unless the officers or agents of such corporation
37 or firm who engage in the business of junk dealer or junk
38 dealer's agent, in behalf of such corporation or firm shall
39 be eligible to be duly licensed as resident junk dealers
40 or junk dealer's agents in accordance with the provisions
41 of this section.

42 (d) The annual license fee to act as a resident junk
43 dealer shall be twenty-five dollars; to act as a junk deal-
44 er's agent, ten dollars; to act as a nonresident junk dealer
45 or his agent who buys or solicits for the purchase of junk
46 within the state, one hundred fifty dollars; to act as an
47 itinerant junk collector, two dollars. Such licenses shall
48 be coextensive with the state, but no nonresident licensee
49 shall be permitted to maintain a fixed place of business
50 within the state: *Provided, however,* That any nonres-
51 ident junk dealer may purchase junk from any resident

52 junk dealer without complying with the provisions of this
53 section, but if said nonresident junk dealer comes into
54 the state in any motor vehicle or horse-drawn vehicle,
55 said nonresident junk dealer shall not be permitted to
56 transport from the state in said vehicle or horse drawn
57 wagon junk purchased from resident junk dealers, unless
58 there is a compliance with this section.

59 (e) Every resident junk dealer shall certify to the tax
60 commissioner the name or names of the agents for whom
61 he desires a license certificate and shall give to each agent
62 so engaged by him a certificate of authority, which cer-
63 tificate the agent shall at all times keep with his license
64 and no such junk dealer's agent's license shall be valid
65 and effective without such certificate of authority. The
66 tax commissioner shall give to each license certificate a
67 numerically designated permit, and such permit so given
68 shall be plainly stenciled or printed as "Dealer's Permit
69 No.....", "Agent's Permit No.....", "Itinerant Collector's
70 Permit No.....", "Nonresident Permit No.....", as the
71 case may be, upon both sides of all trucks or other vehi-
72 cles used in the collecting and transporting of junk. But
73 the tax commissioner shall not issue a junk dealer's agent's
74 license until the applicant therefor shall first have pre-
75 sented a certificate from a duly licensed junk dealer show-
76 ing such authorization, and no license shall be issued to a
77 junk dealer's agent or itinerant junk collector unless he
78 shall file with the tax commissioner an affidavit setting
79 forth that such applicant has not been convicted of a
80 felony; that he has not been convicted of a misdemeanor
81 in connection with the junk business within a five year
82 period to the time of his application, and that in the event
83 the application is for a resident dealer's license that he has
84 resided in the state for a period of one year next preceding
85 the date of his application, which said certificate and affi-
86 davit shall be filed by the tax commissioner issuing the
87 license in his office.

88 No license hereunder shall be transferable.

89 No one who has been convicted of a felony shall be
90 licensed as a junk dealer, junk dealer's agent or itinerant
91 junk collector, and no one convicted of a misdemeanor
92 in connection with the junk business within a five year

93 period prior to the passage of this article shall be licensed
94 as a junk dealer, junk dealer's agent or itinerant junk
95 collector.

96 No person engaged in the junk business shall engage a
97 person as a junk dealer's agent who is ineligible to receive
98 a resident junk dealer's or junk dealer's agent's license.
99 Any license issued upon false affidavit or any improper
100 license issued hereunder shall be ipso facto void.

101 (f) Any person who shall violate the provisions of
102 this section shall be subject to the applicable provisions
103 of chapter sixty-one, article three, section forty-nine of
104 this code.

Sec. 8. *Hawkers and Peddlers.*—(a) The annual license
2 fee to act as a hawker or peddler, if the person licensed
3 travels without a motor vehicle, shall be ten dollars; if
4 he travels with a motor vehicle of not more than one-half
5 ton capacity, fifteen dollars; if he travels with a motor
6 vehicle of more than one-half ton capacity, but not exceed-
7 ing one ton capacity, fifty dollars; if he travels with a motor
8 vehicle of more than one ton capacity, but not exceeding
9 two tons' capacity, one hundred dollars; and if he travels
10 with a motor vehicle of more than two tons' capacity, one
11 hundred fifty dollars, plus one hundred dollars for each
12 additional ton or fraction thereof over two tons' capacity;
13 and the person licensed shall pay at the same rate for each
14 and every motor vehicle so used. Such person shall carry
15 his license in some conspicuous place in his vehicle or
16 about his pack; and in addition thereto he shall cause
17 to be painted or stenciled in a conspicuous place on the
18 left-hand side of his vehicle the number of such license
19 and the words "West Virginia Hawker and Peddler" and
20 the license year for which said license is issued, which
21 said information shall be in black letters on a white back-
22 ground, and the whole thereof shall be at least eight by
23 twenty inches in size.

24 When used in this section, the term "sale" shall mean
25 and include both sales for money payment or for barter,
26 and offers to make any such sale and offers to render any
27 service or the rendering thereof.

27a Any person who shall carry goods, wares, or merchan-
28 dise from place to place, either in person or by agent or
29 employee, and sell, for delivery at the same time, any such
30 goods, wares or merchandise to any purchaser, at whole-
31 sale or retail, and any person who shall solicit for the pur-
32 pose of rendering any service, shall be deemed a hawker
33 or peddler under this section.

34 (b) The provisions of this section shall not apply to any
35 person who sells any goods, wares or merchandise to be
36 delivered in the future; or to any of the following who
37 offer immediate delivery of the goods, wares or merchan-
38 dise being sold:

39 (1) Any person or persons engaged within this state in
40 the business or calling of agriculture, horticulture or graz-
41 ing, who sells or sell individually or collectively, one or
42 more for the other or others, the products derived from
43 his or their business or calling aforesaid;

44 (2) Any person engaged in the maintenance or operation
45 of a retail merchandise store to exchange goods, wares or
46 merchandise from such store for agriculture, horticultural
47 or grazing products or to resell any such products received
48 in due course of such business; nor to any other retail
49 business concern, established and operating continuously
50 for one year or more within this state in the sale of any
51 product or products over regular routes;

52 (3) Any wholesaler or jobber selling soft drinks or non-
53 intoxicating beer for which he is duly licensed under other
54 provisions of this chapter;

55 (4) Any person who sells petroleum products, ice, wood,
56 meat, milk, ice cream, bread, cakes, pies, and other bakery
57 products, butter and eggs, manufactured, grown or pro-
58 duced by any such person and not purchased by him for
59 resale;

60 (5) Any sales by societies, groups or organizations acting
61 for charitable, religious or benevolent purposes;

62 (6) Any agent or salesman selling manufactured prod-
63 ucts, except green groceries and canned or bottled fruit
64 products, produced by his employer, and who sells the
65 same to retail dealers for the purpose of resale;

66 (7) Any firm, corporation or individual having a stock of
67 goods, or merchandise, or manufacturing or processing
68 plant or plants kept or operating at a fixed situs in the
69 state of West Virginia, and declared for taxation in the
70 county where located, and using a vehicle, or vehicles
71 over a fixed route or routes, for the purpose of selling or
72 distributing, at wholesale, their, his or its said merchan-
73 dise, stock of goods or plant products: *Provided, however,*
74 That any person exempt from license as above provided,
75 shall obtain from the tax commissioner a license receipt,
76 without cost, showing that he is so exempt, which shall
77 be effective for the period as provided for annual licenses
78 in this article and shall be coextensive with the entire
79 state; but to obtain such license receipt he shall make an
80 affidavit and produce such other evidence as to the fact
81 entitling him to such exemption as the tax commissioner,
82 in his discretion, may require, which shall be on a form
83 to be prescribed by the tax commissioner.

Sec. 9. *Pawnbrokers.*—The annual license fee to engage
2 in the business of pawnbroker shall be one hundred dol-
3 lars. The term pawnbroker shall include any person, firm,
4 partnership, association or corporation engaged in the
5 business of lending money on deposit or pledge of per-
6 sonal property or other valuable thing, other than securi-
7 ties or printed evidence of indebtedness, or in the busi-
8 ness of purchasing personal property, such as articles
9 made of or containing gold, silver, platinum or other
10 precious metals or jewels of any description for the pur-
11 pose of reducing or smelting them into any form different
12 from their condition or construction when purchased and
13 reselling or marketing the product.

Sec. 10. *Itinerant Vendors.*—(a) When used in this sec-
2 tion the term “itinerant vendor” shall mean and include
3 all persons who engage or conduct within this state, either
4 in one locality, or in traveling from place to place, a tem-
5 porary or transient business of selling goods, wares and
6 merchandise; and who, for the purpose of carrying on such
7 business, use, lease or occupy either in whole or in part,
8 a room, building or other structure, or who use, lease or

9 occupy for such purposes a room or rooms in any hotel or
10 lodging house, for the exhibition and sale of such goods,
11 wares and merchandise; and the person so engaged shall
12 not be relieved from the provisions of this section by rea-
13 son of association temporarily with any local dealer,
14 trader, merchant or auctioneer, or by conducting such tem-
15 porary or transient business in connection with or as part
16 of the business of, or in the name of, any local dealer,
17 trader, merchant or auctioneer. The provisions of this
18 section shall not apply to sales made to persons by com-
19 mercial travelers, or selling agents in the usual course of
20 business, nor to bona fide sales of goods, wares or mer-
21 chandise by sample for future delivery; nor to hawkers
22 or peddlers in the streets, roads or highways, from packs
23 or vehicles, nor to persons selling meat or the products of
24 the farm, garden or dairy, nor to any sales of goods, wares
25 or merchandise on the grounds of any agricultural asso-
26 ciation during the continuance of any annual fair held
27 by such association; nor to any sales by societies acting for
28 charitable, religious or benevolent purposes; nor to judi-
29 cial sales directed by law, or under the orders of any court;
30 nor to the sales of the common necessities of life in any
31 public market place.

32 (b) No itinerant vendor shall advertise, represent or
33 hold forth a sale of goods, wares or merchandise as a bank-
34 rupt, insolvent, assignee, trustee, estate, executor, ad-
35 ministrator, receiver, attorney, manufacturer's wholesale
36 or closing out sale, or a sale of any goods damaged by
37 smoke, fire, water or otherwise, unless before so doing he
38 shall state in writing, under oath, to the tax commissioner
39 at the time he makes application for a license, hereinafter
40 provided for, all the facts relating to the reason and char-
41 acter of such special sale as advertised, held forth, or repre-
42 sented, including a statement of the names of the persons
43 from whom such goods, wares or merchandise were pur-
44 chased, and the date of the delivery of the same to the
45 person applying for license; the place, if any, where such
46 goods, wares or merchandise were previously exposed for
47 sale, and such details as are necessary to exactly locate
48 and fully identify all such goods, wares and merchandise

49 proposed to be sold. And such itinerant vendor shall also
50 include in such statement the name and residence of the
51 owner or owners in whose interest the business is con-
52 ducted, to be kept on file in the office of the tax commis-
53 sioner and a record shall be kept by said tax commissioner
54 of all such statements, in convenient form and open to
55 public inspection.

56 (c) Every itinerant vendor shall execute a continuing
57 bond in the form prescribed by the tax commissioner with
58 satisfactory corporate surety in the penalty of five thou-
59 sand dollars, payable to the state of West Virginia, con-
60 ditioned that such itinerant vendor will pay all damages
61 accruing to anyone by reason of any act or action done,
62 performed or taken by such itinerant vendor in or about
63 the conduct of his business and further conditioned that
64 such itinerant vendor will pay all taxes, fees and penalties
65 imposed by this state and the political subdivisions there-
66 of: *Provided, however*, That the aggregate liability of the
67 surety for all such damages, taxes, fees, and penalties shall,
68 in no event, exceed the sum of said bond.

69 (d) This bond shall be filed with the tax commissioner
70 and shall be open to inspection during business hours to
71 any person desiring to inspect the same.

72 (e) The annual license fee to carry on the business of
73 itinerant vendor shall be five hundred dollars.

74 (f) Every itinerant vendor who sells or exhibits for
75 sale at public or private sale, any goods, wares or mer-
76 chandise without first obtaining a license therefor, and in
77 all other respects complying with the provisions of this
78 article, or who makes any false statement in reference to
79 the matter set out in subsection (b) hereof, or who fails
80 to comply with the requirements of any of the sections of
81 this article, and every person, whether principal or agent,
82 who, by circular, handbills, newspaper, or in any manner
83 advertises such sale, as herein described, before proper
84 licenses are issued to the vendor, and before he has com-
85 plied with the provisions of this article, shall be guilty of
86 a violation of this article, and shall be punished accord-
87 ingly.

Sec. 11. *Theatres and Public Shows*.—A theatre, opera house or other permanent place for public shows, may be kept or maintained upon the payment of the license fee hereinafter specified. In a city or town with a population of thirty thousand or more, according to the last official census, for three months, the fee shall be one hundred dollars; for six months, one hundred thirty dollars; and for one year, one hundred sixty dollars. In a city or town with a population of less than thirty thousand but more than twenty thousand, as aforesaid, for three months, the fee shall be seventy-five dollars; for six months, one hundred dollars; and for one year, one hundred twenty-five dollars. In a city or town with a population of less than twenty thousand but more than ten thousand, as aforesaid, for three months, the fee shall be forty dollars; for six months, sixty dollars; and for one year, one hundred dollars. In a city or town with a population of less than ten thousand but more than five thousand, as aforesaid, for three months, the fee shall be twenty dollars; for six months, thirty dollars; and for one year, forty dollars. In a city or town with a population of less than five thousand but more than two thousand, as aforesaid, for three months, the fee shall be ten dollars; for six months, fifteen dollars; and for one year, twenty dollars. In a city or town with a population of less than two thousand, as aforesaid, or at any other place within the state, for three months, the fee shall be five dollars; for six months, eight dollars; and for one year ten dollars: *Provided further*, That if such theatre, opera house, or other permanent place for public shows is conducted outside of but within one mile of the corporate limits of any city or town, the license fee shall be the same as if such performance were given within such city or town; and, if outside of but within one mile of the corporate limits of two or more cities or towns, the license fee shall be the same as if it had been given within the largest of such cities or towns: *Provided further*, That any theatre, opera house or other permanent place for public shows, including drive-in theatres, kept, maintained or operated in such a location

40 as to be exempt from the foregoing provisions of this sec-
41 tion shall pay an annual license fee of fifty dollars.

Sec. 12. *Collection Agencies.*—The annual license fee
2 to engage in the business of a collection agency within
3 this state shall be one hundred dollars. For purposes of
4 this section, solicitation or collection by or through an
5 agent operating within this state shall be considered to be
6 engaging in the business of a collection agency within this
7 state. Before such certificate of license is issued, the per-
8 son applying for the same shall execute a continuing bond
9 in the form prescribed by the tax commissioner with satis-
10 factory corporate surety in the penalty of two thousand
11 dollars, conditioned that such person will pay all damages
12 resulting from any unlawful act or action by such person
13 or his or its agent in connection with the conduct of the
14 business of the collection agency. This bond shall be filed
15 with the tax commissioner.

Sec. 13. *Employment Agent.*—The annual license fee to
2 conduct the business of an employment agent, to receive
3 applications for employment, to hire or contract with per-
4 sons for employment shall be two hundred dollars, except
5 that the annual license fee for an agency or registry for
6 the employment of nurses, practical nurses or undergrad-
7 uate nurses, shall be twenty-five dollars.

8 When used in this section the term “employment agent”
9 shall be deemed to mean and include the same persons as
10 defined in section four of article two of chapter twenty-
11 one of this code.

Sec. 14. *Bowling Alleys, Billiard, Pool or Bagatelle*
2 *Tables.*—The annual license fee to keep or maintain a
3 bowling alley, a billiard, pool or bagatelle table, or table
4 of like kind, for public use, where any charge is made for
5 the use of the same, shall be twenty-five dollars; but, if
6 more than one of such alleys or tables be kept or main-
7 tained in the same building by the same person, the fee
8 shall be twenty-five dollars for the first one and fifteen
9 dollars for each additional one.

10 The licensee, his agents or employees shall not permit
11 any person in any manner to bet or wager anything of

12 value upon any game played upon such alleys or tables.
13 Such licensee, his agents or employees shall not permit
14 any one to bring any intoxicating liquors of any kind into
15 such building or other place where such alleys or tables
16 are located.

17 Persons keeping or maintaining billiard, pool or bag-
18 atelle tables, or other tables of like kind, their agents or
19 employees, shall not permit any person under the age of
20 eighteen years to play at such tables and shall not permit
21 any such person under the age of eighteen years to re-
22 main or loiter, whether playing at such tables or not, in
23 the room where such tables are located.

Sec. 15. *Application for and Issuance of Licenses; Evi-*
2 *dence of License; Fee.*—The licenses provided for in this
3 article shall be issued in the form of a certificate by the
4 tax commissioner to any person making proper applica-
5 tion therefor on forms to be prescribed and furnished
6 by the tax commissioner and tendering the license tax
7 and a filing tax fee of fifty cents for each license cer-
8 tificate requested. In addition to the required license
9 certificate there shall be required and issued at the time
10 of the issuance of said certificate to the person owning
11 coin operated devices a decalomania stamp or other evi-
12 dence of said license certificate, at a cost not to exceed
13 fifty cents each, for each coin operated device licensed by
14 said certificate. The tax commissioner shall collect in full
15 the proper taxes and fees and determine to his satisfaction
16 that all the conditions precedent to the granting of such
17 license have been fulfilled by the applicant before issuing
18 a certificate of license.

Sec. 16. *Conditions Precedent to Doing Business.*—Pay-
2 ment in full of the proper tax and fee as specified in this
3 article, the issuance of a certificate of license under the
4 provisions of the preceding section, and the fulfillment of
5 all terms and conditions of such grant shall be conditions
6 precedent to the transaction of any business, activity,
7 trade or employment for which a license is required by
8 this article.

Sec. 17. *Licenses Coextensive With the State.*—Except

2 as herein otherwise expressly provided, licenses issued
3 pursuant to this article shall be coextensive with the state.

Sec. 18. *Effect of State License.*—Nothing in this article,
2 and no payment or issuance of any certificate of license
3 under the provisions hereof, shall be deemed to legalize
4 any act which otherwise may be in violation of law, or to
5 exempt any person from any penalty prescribed for such
6 violation.

Sec. 19. *Effect of State License within Municipalities.*—
2 When any municipality is authorized by its charter or by
3 any law of this state to impose a penalty for engaging in
4 or prosecuting any business, activity, trade or employment
5 within the limits of such municipality without first having
6 obtained a license therefor pursuant to the ordinances of
7 such town, no state license issued under this article shall
8 exonerate the licensee from any such penalty, unless other-
9 wise expressly provided, whether such penalty be greater
10 or less than that imposed for the violation of the provi-
11 sions of this article.

Sec. 20. *Time for Which Licenses Granted.*—Except as
2 may be herein otherwise expressly provided, all annual
3 licenses issued under the provisions of this article shall be
4 for a period of one year beginning on the first day of July
5 and ending on the thirtieth day of the following June:
6 *Provided, however,* That no license for any purpose for
7 any length of time shall be issued for less than two dol-
8 lars.

Sec. 21. *Injunction against Collection of License Tax;*
2 *Payment Under Protest.*—No injunction shall issue from
3 any court in this state enjoining the collection of any li-
4 cense tax provided herein, but the party claiming that any
5 license is not due, for any reason, shall pay the same under
6 protest and petition for refund in accordance with the pro-
7 visions of section two-a of article one of this chapter.

Sec. 22. *Exhibition of Licenses.*—Every person to whom
2 a certificate of license shall be issued under the provisions
3 of this article shall keep such certificate posted in a con-
4 spicuous position in the place where the privileges of such

5 license are exercised, except as otherwise specifically pro-
6 vided for in this article.

7 Such certificate of license shall be produced for inspec-
8 tion whenever required by the tax commissioner or his
9 deputies or by the prosecuting attorney or sheriff of the
10 county wherein the privileges of such license are exercised.

Sec. 23. *Licenses, a Personal Privilege.*—Every license
2 issued under the provisions of this article shall confer a
3 personal privilege only to transact the business, activity,
4 trade or employment which may be the subject of the
5 license and shall not be exercised except by the person
6 holding the same and shall not be assignable.

Sec. 24. *Effect of Change in Partners or Name of Firm.*—
2 No changes in the name of the firm, nor the taking in of
3 one or more new partners, nor the withdrawal of one or
4 more members of the firm, so long as at least one member
5 remains the same, shall be considered as terminating the
6 privileges of any license granted to such partners or firm.

Sec. 25. *Collection by Distraint.*—The tax commissioner,
2 or his agents, may distrain upon any personal property,
3 including intangibles, of any person delinquent in the pay-
4 ment of taxes and penalties accrued and unpaid under the
5 provisions of this article and may require the assistance
6 of the sheriff of any county in levying such distress in the
7 county in which such sheriff is an officer. A sheriff so
8 collecting taxes due hereunder shall be entitled to com-
9 pensation in the amount of all penalties collected over and
10 above the principal amount of tax due, but in no case shall
11 such compensation exceed twenty-five dollars. All taxes
12 and penalties so collected, less the compensation above,
13 shall be remitted within ten days after the collection to
14 the tax commissioner. The tax commissioner shall pre-
15 scribe by general regulation the manner of remittance of
16 such funds and of allowing the collecting officer the com-
17 pensation due him under this section. The sheriff shall be
18 authorized to distrain immediately upon request, as afore-
19 said, for the amount with which any person may have been
20 assessed under the provisions of this article, and to sell
21 upon ten days' notice so much of said person's personal

22 property, subject to such distress, as may be necessary to
23 pay the tax so assessed, including penalties.

Sec. 26. *Injunction against Unlicensed Business.*—If any
2 person engages in or prosecutes any business, activity,
3 trade or employment contrary to any of the provisions of
4 this article, whether without obtaining a license therefor
5 before commencing the same, or by continuing the same
6 after the termination of the effective period of any such
7 license, the circuit court, or the judge thereof in vacation,
8 of the county in which such violation occurred, shall, upon
9 proper application in the name of the state, and after ten
10 days written notice thereof to such person, grant an in-
11 junction prohibiting such person from continuing such
12 business, activity, trade or employment until he has fully
13 complied with the provisions of this article. The remedy
14 provided in this section shall be in addition to all other
15 penalties and remedies provided by law.

Sec. 27. *Additional Penalties when Business Transacted
2 without License.*—Any person engaging in or prosecuting
3 any business, activity, trade or employment contrary to
4 the provisions of this article, whether without obtaining
5 a license therefor before commencing the same, or by
6 continuing the same after the termination of the effective
7 period of any such license, shall, in addition to paying the
8 license tax, be liable to the following penalties: If the
9 license tax to which he is subject is an annual one, or for
10 a period of one month or more, ten per cent of such tax
11 for each month or part thereof during which he had been
12 in default; if the license tax aforesaid is for any period
13 less than one month, ten per cent of such tax for each
14 such tax period or part thereof during which he has been
15 in default. It shall be the duty of the tax commissioner
16 to collect the full amount of the license and penalty there-
17 for.

Sec. 28. *Collection of Back Taxes.*—Any person engag-
2 ing in or prosecuting any business, activity, trade or em-
3 ployment contrary to the provisions of this article,
4 whether without obtaining a license therefor before com-
5 mencing the same, or by continuing the same after the

6 termination of the effective period of any such license,
7 shall, in addition to all other penalties provided for in this
8 article, be liable to the payment of all back taxes and
9 penalties for a period not exceeding five years.

Sec. 29. *Collection by Action or Suit.*—The tax com-
2 missioner may collect any license tax and penalty unpaid
3 under the provision of this article by action in debt, mo-
4 tion for judgment or other appropriate proceeding, includ-
5 ing suit in the court of any justice in the county in which
6 the defaulting licensee resides or in the county in which
7 the activity subject to license was engaged in.

Sec. 30. *Criminal Liability for Violation of Provisions of*
2 *Article; Jurisdiction.*—Except as may be herein otherwise
3 expressly provided, any person violating any of the pro-
4 visions of this article shall be guilty of a misdemeanor and
5 upon conviction thereof shall be fined not less than fifty
6 nor more than two hundred dollars, or confined in jail
7 not more than three months, or both, in the discretion of
8 the court; and each day or part thereof that any violation
9 shall continue shall be deemed to constitute a distinct and
10 separate offense and be punishable accordingly. Justices
11 of the peace shall have concurrent jurisdiction with any
12 other courts having jurisdiction for the trial of all misde-
13 meanors arising under this section.

Sec. 31. *Interpretation of Preceding Sections.*—None of
2 the provisions of the preceding sections shall affect any
3 of the sections dealing with corporation land-holding or
4 charter taxes, unless specifically so provided.

CHAPTER 161

(House Bill No. 87—By Mr. Myles)

AN ACT to repeal article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article thirteen-a, chapter eleven, relating to the license for establishing, maintaining or operating a store.

[Passed March 8, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 13-a. License for Operation, etc., of Stores.

Section

1. Definitions.
2. Unlawful to operate store without license.
3. Annual license tax.
4. Exemptions.
5. License tax for part year.
6. Application for license; filing fee.
7. Return of application for correction; granting and display of license.
8. License not assignable and not transferable.
9. Change of location of store.
10. Expiration and renewal of license.
11. Penalties.
12. Injunction against unlicensed store.
13. Collection of license taxes for past years.
14. Collection by action or suit.
15. Injunction against collection of license tax; payment under protest.
16. Criminal liability for violations of this article.
17. Cost of administration; disposition of money collected.
18. Effective date; refund of duplicate tax.

Be it enacted by the Legislature of West Virginia:

That article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that a new article, thirteen-a, be enacted to read as follows:

Section 1. *Definitions.*—The term “person” shall include
 2 any group or combination acting as a unit, individual,
 3 committee, guardian, trustee, executor, administrator,
 4 partnership, co-partnership, joint adventure, association,
 5 trust, firm or corporation, either domestic or foreign,
 6 which is controlled or held with others by majority stock
 7 ownership or ultimately controlled or directed by one
 8 management or association of ultimate management.

9 The term “special store” as used in this article shall be
 10 construed to mean and include any store or stores or any
 11 mercantile establishment or establishments, in which
 12 goods, wares, or merchandise of any kind except ciga-
 13 rettes, tobacco products and soft drinks are purchased,
 14 ordered, sold or offered for sale, either at retail or whole-
 15 sale, and which contains no coin operated device, or de-
 16 vices, owned and operated by the store proprietor.

17 The term “general store” as used in this article shall be
 18 construed to mean and include any store or stores or any

19 mercantile establishment or establishments, in which
20 goods, wares, or merchandise of any kind are purchased,
21 ordered, sold or offered for sale either at retail or whole-
22 sale.

23 For the purpose of this article, no coin operated device,
24 or devices, shall be construed to be a store.

Sec. 2. *Unlawful to Operate Store Without License.*—

2 It shall be unlawful for any person to establish, operate
3 or maintain any store in this state without first having
4 obtained a license so to do from the state tax commis-
5 sioner as hereinafter provided.

Sec. 3. *Annual License Tax.*—Every person establish-
2 ing, operating or maintaining one or more special stores
3 within this state under the same general management,
4 supervision or ownership shall pay the annual license
5 taxes hereinafter prescribed for the privilege of estab-
6 lishing, operating or maintaining such stores: (1) For
7 one store or more, but not to exceed five stores, five dol-
8 lars for each store; (2) for six stores, or more, but not to
9 exceed ten stores, twenty dollars for each additional
10 store; (3) for eleven stores, or more, but not to exceed
11 fifteen stores, forty dollars for each additional store; (4)
12 for sixteen stores, or more, but not to exceed twenty
13 stores, sixty dollars for each additional store; (5) for
14 twenty-one stores or more, but not to exceed thirty stores,
15 eighty dollars for each additional store; (6) for thirty-
16 one stores, or more, but not to exceed fifty stores, two
17 hundred dollars for each additional store; (7) for fifty-
18 one stores, or more, but not to exceed seventy-five stores,
19 four hundred dollars for each additional store; (8) for
20 each store in excess of seventy-five, five hundred dollars
21 for each additional store.

22 Every person establishing, operating or maintaining one
23 or more general stores within this state under the same
24 general management, supervision or ownership shall pay
25 the annual license taxes hereinafter prescribed for the
26 privilege of establishing, operating or maintaining such
27 stores: (1) For one store or more, but not to exceed five
28 stores, fifteen dollars for each store; (2) for six stores, or

29 more, but not to exceed ten stores, forty dollars for each
30 additional store; (3) for eleven stores, or more, but not
31 to exceed fifteen stores, eighty dollars for each additional
32 store; (4) for sixteen stores, or more, but not to exceed
33 twenty stores, one hundred twenty dollars for each ad-
34 ditional store; (5) for twenty-one stores or more, but not
35 to exceed thirty stores, one hundred sixty dollars for
36 each additional store; (6) for thirty-one stores, or more.
37 but not to exceed fifty stores, four hundred dollars for
38 each additional store; (7) for fifty-one stores, or more.
39 but not to exceed seventy-five stores, eight hundred dol-
40 lars for each additional store; (8) for each store in excess
41 of seventy-five, one thousand dollars for each additional
42 store.

Sec. 4. *Exemptions.*—The establishment, operation or
2 maintenance of stores by the following shall be exempt
3 from the license tax imposed by this article: (1) The
4 United States of America, the state of West Virginia and
5 its political subdivisions; (2) religious and charitable
6 organizations; (3) any person or persons engaged within
7 this state in the business of producing agricultural prod-
8 ucts who, individually or collectively, sell in such store
9 only agricultural products which he or they have pro-
10 duced.

Sec. 5. *License Tax for Part Year.*—Each license is-
2 sued prior to the first day of January of any year shall be
3 charged for at the full rate and each license issued on
4 or after the first day of January shall be charged for at
5 one-half of the full rate, as prescribed in section three.

Sec. 6. *Application for License; Filing Fee.*—Any per-
2 son desiring to establish, operate or maintain a store in
3 this state shall apply to the state tax commissioner for a
4 license so to do. The application for a license shall be
5 made on the form which shall be prescribed and furnished
6 by the state tax commissioner and shall set forth the name
7 and address of the applicant, the name and location of
8 such store, and such other facts as the state tax com-
9 missioner may require. If the applicant desires to operate
10 more than one such store, he shall make a separate appli-

11 cation for each such store. Each such application shall
12 be accompanied by a filing fee of fifty cents for each license
13 requested, and by the license tax prescribed in section
14 three.

Sec. 7. *Return of Application for Correction; Granting
2 and Display of License.*—As soon as practicable after the
3 receipt of any such application, the state tax commissioner
4 shall carefully examine such application to ascertain
5 whether it is in proper form and contains the necessary
6 and requisite information. If, upon examination, the state
7 tax commissioner shall find that any such application is
8 not in proper form and does not contain the necessary and
9 requisite information, he shall return such application
10 for correction. If an application is found to be satisfactory,
11 and if the filing fee and license tax, as herein prescribed,
12 shall have been paid, the state tax commissioner shall
13 issue to the applicant a license for each store for which
14 an application for license shall have been made. Each
15 licensee shall display the license so issued in a con-
16 spicuous place in the store for which such license is
17 issued.

Sec. 8. *License not Assignable and not Transferable.*—
2 The license imposed by this article shall not be assignable
3 and shall not be transferable.

Sec. 9. *Change of Location of Store.*—Licenses issued
2 under the provisions of this article may be altered so as
3 to permit removal of the store to another location. In
4 order to be effective at the new location, however, the
5 certificate of license must show upon its face an endorse-
6 ment of the change by the state tax commissioner.

Sec. 10. *Expiration and Renewal of License.*—All li-
2 censes shall be so issued as to expire on the thirtieth day
3 of June of each year. On or before the first day of July
4 of each year, every person having a license shall apply
5 to the state tax commissioner for a renewal for the year
6 next ensuing, unless such person has ceased to operate
7 such store or does not propose to continue operation of
8 the store during the year next ensuing, in which event

9 he shall notify the state tax commissioner that he has
10 ceased operation of the store or that he proposes to cease
11 operation of the store prior to the first day of July of the
12 year next ensuing. All applications for renewal shall be
13 made on the forms prescribed by the state tax commis-
14 sioner. Each application for a renewal shall be accom-
15 panied by a filing fee of fifty cents for each license re-
16 quested and by the license tax as prescribed in section
17 three.

Sec. 11. *Penalties.*—Any person who establishes, oper-
2 ates or maintains a store without obtaining a license
3 therefor or continues to operate the same after the termi-
4 nation of a license therefor shall, in addition to paying the
5 license tax, be subject to a penalty of ten per cent of such
6 license tax for each month or part thereof during which
7 he had been in default. This penalty shall be assessed
8 and collected in the same manner as the license tax.

Sec. 12. *Injunction Against Unlicensed Store.*—If any
2 person establishes, operates or maintains a store without
3 obtaining a license therefor, or continues to operate or
4 maintain such store after the termination of the effective
5 period of any such license, the circuit court, or the judge
6 thereof in vacation, of the county in which such violation
7 occurred, shall, upon proper application in the name of
8 the state, and after ten days' written notice thereof to such
9 person, grant an injunction prohibiting such person from
10 continuing the operation of such store until he has fully
11 complied with the provisions of this article.

Sec. 13. *Collection of License Taxes for Past Years.*—
2 Any person establishing, operating or maintaining a store
3 contrary to the provisions of this article, whether without
4 obtaining a license therefor before commencing the same,
5 or by continuing the same after the termination of the
6 effective period of any such license, shall, in addition to
7 all other penalties provided for in this article, be liable
8 to the payment of all license taxes and penalties for a
9 period not exceeding five years.

Sec. 14. *Collection by Action or Suit.*—The state tax
2 commissioner may collect any license tax and penalty

3 unpaid under the provisions of this article by action in
4 debt, motion for judgment or other appropriate proceed-
5 ing, including suit in the court of any justice, in the county
6 in which the store or any one of the stores is located.

Sec. 15. *Injunction Against Collection of License Tax; Payment Under Protest.*—No injunction shall issue from
2 any court in this state enjoining the collection of any
3 license tax provided herein, but the party claiming that
4 any license tax is not due, for any reason, shall pay the
5 same under protest and petition for refund in accordance
6 with the provisions of section two-a, article one of this
7 chapter.
8

Sec. 16. *Criminal Liability for Violations of this Article.*
2 —Any person who violates any of the provisions of this
3 article shall be guilty of a misdemeanor and upon convic-
4 tion thereof shall be fined not less than twenty-five dollars
5 nor more than one hundred dollars and each and every
6 day that such violation shall continue shall constitute a
7 separate and distinct offense.

Sec. 17. *Cost of Administration; Disposition of Money Collected.*—Any and all expenses incurred by the state
2 tax commissioner in the administration of this article
3 shall be paid out of the funds accruing from the taxes and
4 fees imposed by and collected under the provisions of
5 this article. All money collected under the provisions of
6 this article shall be paid into the state treasury, monthly,
7 by the state tax commissioner, and shall be added to and
8 shall constitute a part of the general fund for the ele-
9 mentary schools.
10

Sec. 18. *Effective Date; Refund of Duplicate Tax.*—
2 This article shall become effective on the first day of July,
3 one thousand nine hundred fifty-seven. The state tax
4 commissioner shall refund to each licensee one-half of
5 the tax and filing fee which the licensee has paid for the
6 calendar year one thousand nine hundred fifty-seven by
7 the issuance of his requisition in accordance with the
8 refund procedure provided in section two-a, article one of
9 this chapter. Return of the old license to the state tax

10 commissioner together with application, tax and filing fee
11 for the new license, shall constitute a sufficient petition
12 for the refund provided herein.

CHAPTER 162

(Com. Sub. for House Bill No. 108—Originating in the
House Committee on Finance)

AN ACT to amend and reenact section twenty, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to refund of tax on gasoline used for certain purposes.

[Passed February 27, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 14. Gasoline Tax.

Section

20. Refund of tax on gasoline used for certain purposes.

Be it enacted by the Legislature of West Virginia:

That section twenty, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 20. *Refund of Tax on Gasoline Used for Certain Purposes.*—Any person who shall buy in quantities of twenty-five gallons or more, at any one time, gasoline as defined by this article, for the purpose of and the same is actually used (a) as a motor fuel for diesel engines not operated upon the public highways or streets of this state, or (b) as a motor fuel to operate tractors and gas engines or threshing machines for agricultural purposes, when such operation is not, in whole or in part, upon the public highways or streets of this state, or (c) as a motor fuel to operate aeroplanes or other aircraft, or (d) by any

12 railway company subject to regulation by the public serv-
13 ice commission of West Virginia, for any purpose other
14 than upon the public highways or streets of this state, or
15 (e) in the business of manufacturing, or in the production
16 of natural resources, either as a motor fuel or for any
17 other purpose except upon the public highways and
18 streets of this state, or (f) as a cleaning fluid in any laun-
19 dry or dry cleaning business, or (g) as a motor fuel in
20 motor boats or other water craft operated upon the navi-
21 gable streams of this state, may, if the gasoline tax im-
22 posed by this article shall have previously been paid upon
23 such gasoline, be refunded a sum equal to the amount of
24 such tax, upon presenting to the tax commissioner an affi-
25 davit accompanied by original or top copy sales slips or
26 invoices, or certified copies thereof, from the distributor
27 or retail dealer, showing such purchases, together with
28 evidence of payment thereof, which affidavit shall set
29 forth the total amount of such gasoline purchased and
30 used by such consumer, other than upon any public high-
31 ways, streets or alleys of this state, and how used; and
32 the tax commissioner upon the receipt of such affidavit
33 and such paid sales slips or invoices shall cause to be
34 refunded such tax paid on gasoline purchased and used
35 as aforesaid. The right to receive any refund under the
36 provisions of this article shall not be assignable and any
37 assignment thereof shall be void and of no effect. Nor
38 shall any payment be made to any person other than the
39 original person entitled thereto using gasoline as herein-
40 before in this section set forth: *Provided, however,* That
41 the tax commissioner shall cause refund to be made under
42 authority of this section only when application for refund
43 is filed with the tax commissioner, upon forms prepared
44 and furnished by the tax commissioner, within ninety
45 days from the date of purchase or delivery of the gaso-
46 line: *And provided further, however,* That any claim
47 for refund not filed within ninety days from the date of
48 purchase or delivery of the gasoline shall not be construed
49 to be or constitute a moral obligation of the state of West
50 Virginia for payment.

CHAPTER 163

(House Bill No. 430—By Mr. Myles and Mr. Seibert)

AN ACT to amend and reenact section three, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the imposition and computation of the consumers sales and service tax.

[Passed March 9, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 15. Consumers Sales Tax.

Section

3. Amount of tax.

Be it enacted by the Legislature of West Virginia:

That section three, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. *Amount of Tax.*—For the privilege of selling
2 tangible personal property and of dispensing certain
3 selected services defined in section eight of this article,
4 the vendor shall collect from the purchaser the tax as
5 provided under this article, and shall pay the amount of
6 tax to the tax commissioner in accordance with the pro-
7 visions of this article.

8 There shall be no tax on sales where the monetary
9 consideration is five cents or less. The amount of the tax
10 shall be computed as follows:

11 (1) On each sale, where the monetary consideration is
12 from six cents to fifty cents, both inclusive, one cent.

13 (2) On each sale, where the monetary consideration is
14 from fifty-one cents to one dollar, both inclusive, two
15 cents.

16 (3) On each fifty cents of monetary consideration or
17 fraction thereof in excess of one dollar, one cent.

18 Separate sales, such as daily or weekly deliveries, shall
19 not be aggregated for the purpose of computation of the
20 tax even though such sales are aggregated in the billing
21 or payment therefor.

CHAPTER 164

(House Bill No. 43—By Mr. Ours, by request)

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, insofar as the same relates to exemptions of sales of personal property and services to fire departments from consumers sales tax.

[Passed February 26, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 15. Consumers Sales Tax.

Section

9. Exemptions.

Be it enacted by the Legislature of West Virginia:

That section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 9. *Exemptions.*—The following sales and services shall be exempt:

3 (1) Sales of gasoline, taxable under article fourteen,
4 chapter eleven of the code, one thousand nine hundred
5 thirty-one;

6 (2) Sales of gas, steam and water delivered to con-
7 sumers through mains or pipes, and sales of electricity;

8 (3) Sales of textbooks required to be used in any of
9 the public schools of this state;

10 (4) Sales of property or services to the state, its insti-
11 tutions or subdivisions, and to the United States, including
12 agencies of federal, state or local governments for distri-
13 bution in public welfare or relief work;

14 (5) Sales of motor vehicles which are titled by the
15 department of motor vehicles and which are subject to
16 the tax imposed by section one, article seven, chapter
17 seventeen of the code;

18 (6) Sales of property or services to churches and bona
19 fide charitable organizations who make no charge what-
20 soever for the services they render or to persons engaged
21 in this state in the business of contracting, manufacturing,
22 transportation, transmission, communication, or in the
23 production of natural resources: *Provided, however,* That
24 the exemption herein granted shall apply only to services,
25 machinery, supplies and materials directly used or con-
26 sumed in the businesses or organizations named above;

27 (7) An isolated transaction in which any tangible per-
28 sonal property is sold, transferred, offered for sale, or
29 delivered by the owner thereof or by his representative
30 for the owner's account, such sale, transfer, offer for sale
31 or delivery not being made in the ordinary course of
32 repeated and successive transactions of like character by
33 such owner or on his account by such representative;

34 (8) Sales of tangible personal property and services
35 rendered for use or consumption in connection with the
36 conduct of the business of selling tangible personal prop-
37 erty to consumers or dispensing a service subject to tax
38 under this article and sales of tangible personal property
39 and services rendered for use or consumption in connec-
40 tion with the commercial production of an agricultural
41 product the ultimate sale of which will be subject to the
42 tax imposed by this article: *Provided, however,* That sales
43 of tangible personal property and services to be used or
44 consumed in the construction of or permanent improve-
45 ment of real property shall not be exempt;

46 (9) Sales of tangible personal property for the purpose
47 of resale in the form of tangible personal property;

48 (10) Sales of property or services to nationally charter-

49 ed fraternal or social organizations for the sole purpose
50 of free distribution in public welfare or relief work.

51 (11) Sales and services, fire fighting, or station house
52 equipment, including construction and automotive, made
53 to any volunteer fire department organized and incor-
54 porated under the laws of the state of West Virginia.

CHAPTER 165

(Senate Bill No. 163—By Mr. Bean, Mr. President)

AN ACT to amend and reenact section five, article four, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation and expenses of members of the board of review on unemployment compensation.

[Passed March 8, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 4. Board of Review.

Section

5. Compensation.

Be it enacted by the Legislature of West Virginia:

That section five, article four, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 5. *Compensation.*—Each member of the board
2 shall receive an annual salary of seven thousand dollars
3 and the necessary traveling expenses incurred in the
4 performance of his duties.

5 Requisition for traveling expenses shall be accompanied
6 by a sworn and itemized statement which shall be filed
7 with the auditor and permanently preserved as a public
8 record.

9 The salaries and the expenses of the members shall be
10 paid from the administration fund.

CHAPTER 166

(Senate Bill No. 245—By Mr. Jackson, of Lincoln)

AN ACT to amend and reenact section seven, article five, chapter twenty-one-a of the code of West Virginia, one thousand and nine hundred thirty-one, as amended, and that a new section be enacted and added to article eight of said chapter twenty-one-a, such new section to be designated section fifteen, all relating to unemployment compensation.

[Passed March 9, 1957; in effect from passage. Approved by the Governor.]

Article

5. Employer Coverage and Responsibility.
8. Unemployment Compensation Fund.

Be it enacted by the Legislature of West Virginia:

That section seven, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that a new section be enacted and added to article eight of said chapter twenty-one-a, such new section to be designated section fifteen, all to read as follows:

Article 5. Employer Coverage and Responsibility.

Section

7. Separate and joint accounts.

Section 7. *Separate and Joint Accounts.*—(1) The director shall maintain a separate account for each employer, and shall credit his account with all contributions heretofore and hereafter paid by him. He shall also credit to all active employers' accounts which have a credit balance on a computation date in an amount equal to all interest credited to the West Virginia unemployment trust fund deposited with the secretary of the treasury

9 of the United States for all periods prior to the computa-
10 tion date of June thirty, one thousand nine hundred fifty-
11 three, and thereafter for the period that has intervened
12 since the last preceding computation date. The propor-
13 tionate share to be credited to each employer's account
14 which has a credit balance on the computation date shall
15 be at a ratio of his credit balance to the total of the credit
16 balances of all employers: *Provided*, That any adjustment
17 made in an employer's account after the computation
18 date shall not be used in the computation of the credit
19 balance of an employer until the next following com-
20 putation date: *Provided further*, That nothing in this
21 chapter shall be construed to grant an employer or in-
22 dividual in his service prior claims or rights to the amounts
23 paid by him into the fund, either on his own behalf or on
24 behalf of such individuals. The account of any employer
25 which has been inactive for a period of four consecutive
26 calendar years shall be terminated for all purposes.

27 (2) Benefits paid to an eligible individual for total un-
28 employment beginning after the effective date of this act
29 shall be charged to the account of the last employer with
30 whom he has had as much as three weeks of continuous
31 employment: *Provided*, That no employer's account will
32 be charged with benefits paid to any individual who has
33 been separated from non-covered employment in which
34 he was employed as much as three weeks: *And provided*
35 *further*, That benefits paid to an eligible individual for
36 partial unemployment beginning after the effective date
37 of this act shall be charged to the account of the claim-
38 ant's current employer.

39 (3) The director may prescribe regulations for the es-
40 tablishment, maintenance, and dissolution of joint ac-
41 counts by two or more employers, and shall, in accordance
42 with such regulations and upon application by two or
43 more employers to establish such an account, or to merge
44 their several individual accounts in a joint account, main-
45 tain such joint account as if it constituted a single em-
46 ployer's account.

Article 8. Unemployment Compensation Fund.**Section**

15. Administrative use of money credited to account of this state in unemployment trust fund pursuant to section 903 of the social security act, as amended.

Section 15. *Administrative Use of Money Credited to Account of This State in Unemployment Trust Fund Pursuant to Section 903 of the Social Security Act, as Amended.*—(1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section nine hundred three of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this act pursuant to a specific appropriation by the Legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be expended to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be used during a twelve-month period beginning on July one and ending on the next June thirty to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section nine hundred three of the Social Security Act, as amended, during the same twelve-month period and the four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts used pursuant to this subsection and charged against the amounts credited to the account of this state during any of such five twelve-month periods. For the purposes of this subsection, amounts used during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount used during any such twelve-month period may be charged

36 against any amount credited during such a twelve-month
37 period earlier than the fourth preceding such period.

38 (2) Money credited to the account of this state pur-
39 suant to section nine hundred three of the Social Security
40 Act, as amended, may not be withdrawn or used except
41 for the payment of benefits and for the payment of ex-
42 penses for the administration of this act and of public
43 employment offices pursuant to this section.

44 (3) Money requisitioned for the payment of expenses
45 of administration pursuant to this section shall be de-
46 posited in the employment security administration fund,
47 but, until expended, shall remain a part of the unemploy-
48 ment compensation fund. The director shall maintain a
49 separate record of the deposit, obligation, expenditure,
50 and return of funds so deposited. If any money so de-
51 posited is, for any reason, not to be expended for the pur-
52 pose for which it was appropriated, or, if it remains un-
53 expended at the end of the period specified by the law
54 appropriating such money, it shall be withdrawn and re-
55 turned to the secretary of the treasury of the United
56 States for credit to this state's account in the unemploy-
57 ment trust fund.

CHAPTER 167

(House Bill No. 362—By Mr. Speaker, Mr. Flannery)

AN ACT authorizing the issuance and sale of bonds of the state of West Virginia to raise money for the purpose of paying a bonus to veterans under and by virtue of the "Korean Veterans Bonus Amendment" to the constitution adopted at the general election held in November, one thousand nine hundred fifty-six, providing for the disposition and expenditure of the proceeds of the sale thereof, and providing for the payment of such bonds and for the rights and security of the holders thereof.

[Passed March 8, 1957; in effect July 1, 1957. Approved by the Governor.]

Korean Veterans Bonus Bonds.**Section**

1. Korean veterans bonus bonds; authority to issue.
2. Transfer, fee; registration, fee; where payable; interest rate; tax exempt.
3. Form of bond.
4. Form of coupon.
5. Listing by auditor.
6. Korean veterans bonus sinking fund for payment of bonds and interest; investment thereof.
7. Covenants of state.
8. Sale by governor; minimum price.
9. Proceeds paid into Korean veterans bonus fund; expenditure.
10. Plates property of state.
11. Treasurer to be custodian of unsold bonds.
13. Payment of expenses.
14. Refunding bonds.

Be it enacted by the Legislature of West Virginia:

Section 1. *Korean Veterans Bonus Bonds; Authority to Issue.*—Bonds of the state of West Virginia are hereby authorized to be issued and sold for the purpose of raising funds for the payment of a cash bonus to veterans, including the costs of administration necessarily incident thereto, under and by virtue of the "Korean Veterans Bonus Amendment" to the constitution adopted at the general election held in November, one thousand nine hundred fifty-six. Such bonds may be issued by the governor in such amounts, in coupon or registered form, in such denominations, at such times and bearing such date or dates as the governor may determine, and shall become due and payable serially beginning one year and ending not more than twenty years from the date thereof. The amount of such bonds maturing in each year shall be so arranged by the governor that the aggregate amount of principal of and interest on such bonds maturing and becoming due in each year shall be approximately equal. A variation of not more than three per cent in such aggregate amounts of principal and interest maturing and becoming due in each year shall be considered a proper compliance with such requirement. All of such bonds maturing more than ten years after the date of issuance thereof shall be redeemable prior to maturity, at the option of the state of West Virginia, at such time or times, at

26 such premium or premiums, and upon such other condi-
27 tions as the governor shall determine and prescribe in
28 the notice of sale thereof.

29 The principal amount of bonds so issued shall not ex-
30 ceed the maximum amount fixed in the Korean veterans
31 bonus amendment. These bonds shall constitute a legal
32 investment for the workmen's compensation fund and the
33 teachers' retirement fund.

Sec. 2. *Transfer, Fee; Registration, Fee; Where Payable; Interest Rate; Tax Exempt.*—The auditor and the treasurer are hereby authorized to arrange for the transfer of registered bonds, and for each such transfer a fee of fifty cents shall be charged by and paid to the state of West Virginia, to the credit of the Korean veterans bonus sinking fund. Bonds taken in exchange shall be canceled by the auditor and treasurer and be carefully preserved by the treasurer. The treasurer shall make provisions for registering "payable to bearer" bonds, and for each bond registered a fee of fifty cents shall likewise be charged by and paid to the state of West Virginia, to the credit of the sinking fund. All of such bonds shall be payable at the office of the treasurer of the state of West Virginia, or, at the option of the holder, at some bank in the city of New York to be designated by the governor. The bonds shall bear interest payable semi-annually, on the first day of and the first day of of each year, to bearer, at the office of the treasurer of the state of West Virginia at the capitol of the state, or at the bank designated by the governor, upon presentation and surrender of interest coupons then due, in the case of coupon bonds. In the case of registered bonds the treasurer of the state of West Virginia shall issue his check for the interest then due on the first day of and the first day of of each year, and mail it to the registered owner at his address as shown by the record of registration. Both the principal and interest of the bonds shall be payable in lawful money of the United States of America and the bonds shall be exempt from taxation by the state of West Virginia, or by any

32 county, district, or municipality thereof, which facts shall
 33 appear on the face of the bonds as part of the contract
 34 with the holder thereof.

Sec. 3. *Form of Bond.*—The bonds and coupons shall be
 2 engraved and the bonds shall be signed on behalf of the
 3 state of West Virginia, by the treasurer thereof, under
 4 the great seal of the state, and countersigned by the
 5 auditor of the state, and shall be substantially in the fol-
 6 lowing form or to the following effect, namely:

7 KOREAN VETERANS BONUS
 8 COUPON BOND

9 (Or registered bond, as the case may be)

10 OF THE
 11 STATE OF WEST VIRGINIA

12 \$..... SERIES No.

13 The state of West Virginia, under and by virtue of
 14 authority of an act of the Legislature passed at the regu-
 15 lar session of one thousand nine hundred fifty-seven, on
 16 the day of, one thousand nine
 17 hundred fifty-seven, and approved by the governor on
 18 the day of, one thousand nine
 19 hundred fifty-seven, which is hereby made a part hereof
 20 as fully as if set forth at length herein, acknowledges
 21 itself to be indebted to, and hereby promises to pay to the
 22 the bearer hereof (in the case of a coupon bond) or to
 23 or assigns (the owner of record, in
 24 case of a registered bond) on the day of,
 25 19, in lawful money of the United States of
 26 America at the office of the treasurer of the state of West
 27 Virginia at the capitol thereof, or at the option of the
 28 holder at bank in the city of New
 29 York, the sum of dollars, with interest thereon
 30 at per cent per annum from date, payable
 31 semi-annually in like lawful money of the United States
 32 of America at the treasurer's office or bank aforesaid, on
 33 the first day of and the first day of
 34 of each year, (and in the case of a coupon bond) according
 35 to the tenor of the annexed coupons, bearing the engraved
 36 facsimile signature of the treasurer of the state of West

37 Virginia, upon surrender of such coupons. This bond (in
38 the case of a coupon bond) may be exchanged for a reg-
39 istered bond of like tenor upon application to the treasurer
40 of the state of West Virginia.

41 This bond is hereby made exempt from any taxation
42 by the state of West Virginia, or by any county, district,
43 or municipal corporation thereof.

44 In testimony whereof, witness the signature of the
45 treasurer of the state of West Virginia, and the counter-
46 signature of the auditor of the state, hereto, affixed ac-
47 cording to law, dated the.....day of.....,
48 one thousand nine hundred....., and the seal
49 of the state of West Virginia.

50 (Seal)

51

52 _____
53 Treasurer of the State of West Virginia

54 Countersigned:

55

Auditor of the State of West Virginia

Sec. 4. *Form of Coupon.*—The form of coupon shall be
2 substantially as follows, to-wit:

3 STATE OF WEST VIRGINIA

4 Bond No. Coupon No.

5 On the first day of, 19, the state of

6 West Virginia will pay to the bearer, in lawful money of

7 the United States of America, at the office of the treasurer

8 of the state, or at the option of the holder at

9 bank in the city of New York, the sum of

10 dollars, the same being semi-annual interest on Korean

11 Veterans Bonus Bond No., series

12

13 _____
Treasurer of the State of West Virginia

14 The signature of the treasurer to such coupon shall be
15 by his engraved facsimile signature and the coupons shall
16 be numbered in the order of their maturity, from number
17 one consecutively. The bonds and coupons may be signed
18 by the present treasurer and auditor, or by any of their
19 respective successors in office, and bonds signed by the
20 persons now in office may be sold by the governor or his

21 successor in office without being signed by the successor
22 in office of the present treasurer or auditor.

Sec. 5. *Listing by Auditor.*—All coupon and registered
2 bonds issued under this act shall be separately listed by
3 the auditor of the state in books provided for the purpose,
4 in each case giving the date, number, character and
5 amount of obligations issued, and in case of registered
6 bonds, the name and post office address of the person, firm
7 or corporation registered as the owner thereof.

Sec. 6. *Korean Veterans Bonus Sinking Fund for Pay-*
2 *ment of Bonds and Interest; Investment Thereof.*—There
3 is hereby created a Korean veterans bonus sinking fund.
4 Into such fund there shall be paid all moneys received from
5 all taxes or charges made applicable by law to the pay-
6 ment of such bonds or the interest thereon, from transfer
7 fees as herein provided, and from any other source which
8 is made liable by law for the payment of the principal
9 of such bonds or the interest thereon.

10 All such funds shall be kept by the treasurer in a
11 separate account, under the designation aforesaid, and all
12 money belonging to the fund shall be deposited in the
13 state treasury to the credit thereof.

14 Such fund shall be applied by the treasurer of the state,
15 first to the payment of the principal and semi-annually in-
16 terest on such bonds as they shall become due as herein
17 provided. The remainder of the fund shall be turned over
18 by the state treasurer to the state sinking fund commis-
19 sion, whose duty it shall be to invest the same in bonds
20 of the government of the United States, bonds of the state
21 of West Virginia, or any political subdivision thereof: *Pro-*
22 *vided, however,* That bonds so purchased by the state
23 sinking fund commission shall mature so as to provide
24 sufficient money to pay off all bonds herein provided for as
25 they may become due. The money so paid into the Korean
26 veterans bonus sinking fund under the provisions of this
27 act shall be expended for the purpose of paying the in-
28 terest and principal of the bonds hereby provided for as
29 they severally become due and payable and for no other

30 purpose except that the fund may be invested until
31 needed, as herein provided.

Sec. 7. *Covenants of State.*—The state of West Virginia
2 hereby covenants and agrees with the holders of bonds
3 issued pursuant hereto that all the provisions of this act
4 shall be and constitute an irrevocable contract with the
5 holders of such bonds from time to time; that the addi-
6 tional charge on the sale of each bottle of alcoholic liquor,
7 otherwise provided by law for payment of such bonds,
8 shall not be reduced so long as any of the bonds, or
9 any interest thereon, are outstanding and unpaid, unless
10 the payment thereof has been adequately provided for;
11 that to the full extent permitted by the constitution of
12 West Virginia any of the covenants, agreements and pro-
13 visions of this act may be enforced in any court of com-
14 petent jurisdiction by any holder of such bonds or of any
15 interest coupon appearing thereto.

16 The state of West Virginia further covenants and agrees
17 that if in any fiscal year thereafter the amount of money
18 derived from such tax or charge, is insufficient to meet all
19 principal and interest payments due on such bonds during
20 that year, it will levy and collect such additional tax or
21 charge on alcoholic liquor as may be necessary to produce
22 sufficient revenue to meet such payments as the same
23 shall become due; or that in lieu of such increased tax or
24 charge on alcoholic liquor, it may levy and collect an
25 additional tax on cigarettes, on beer, an additional general
26 consumers sales tax, or a graduated income tax, or a
27 combination of such taxes and charges, in an amount
28 necessary for such purpose.

Sec. 8. *Sale by Governor; Minimum Price.*—The gover-
2 nor shall sell the bonds herein mentioned at such time or
3 times as he may determine necessary to provide funds for
4 payment of the bonus as herein provided. All sales shall
5 be at not less than par and accrued interest and an interest
6 cost not to exceed three and one-fourth per cent. All inter-
7 est coupons becoming payable prior to the sale date shall
8 be cancelled by the treasurer and rendered ineffective,
9 before the delivery of the bonds so sold.

2 *Sec. 9. Proceeds Paid into Korean Veterans Bonus Fund;*
3 *Expenditure.*—The proceeds of all sales of bonds herein
4 authorized shall be paid into the Korean veterans bonus
5 fund, which is hereby created, and shall be expended
6 solely for the payment of the veterans bonus and the costs
7 of administration necessarily incident thereto.

8 If deemed advisable, the governor may direct the state
9 treasurer to invest a part of the moneys in the Korean
10 veterans bonus fund, in direct obligations of the United
11 States of America, having a maturity of not exceeding one
12 hundred eighty-five days from date of purchase. Any
13 interest or profit accruing from such purchases shall be
credited to the Korean veterans bonus fund.

2 *Sec. 10. Plates Property of State.*—The plates from
3 which the bonds authorized by this act are engraved
shall be the property of the state of West Virginia.

2 *Sec. 11. Treasurer to Be Custodian of Unsold Bonds.*—
3 The state treasurer shall be the custodian of all unsold
bonds issued pursuant to the provisions of this act.

2 *Sec. 12. Interim Certificates.*—The governor may au-
3 thorize the issuance of interim certificates to be issued
4 to the purchasers of such bonds to be held by them in lieu
5 of engraved bonds. When interim certificates are so is-
6 sued, they shall become full and legal obligations of the
7 state of West Virginia under all of the provisions of this
8 act just as fully and completely as the engraved and per-
manent bonds.

2 *Sec 13. Payment of Expenses.*—All necessary expenses
3 incurred in the execution of this act shall be paid out of
4 the Korean veterans bonus fund on warrants of the auditor
of the state drawn on the state treasury.

2 *Sec. 14. Refunding Bonds.*—Whenever it shall be ad-
3 vantageous to do so, authority is hereby conferred for the
4 issuance of refunding bonds of the state of West Virginia
5 in an amount sufficient to refund all unpaid veterans
6 bonus bonds heretofore issued under and by virtue of the
7 veterans ninety million dollar bonus amendment to the
constitution, adopted at the general election held in No-

8 vember, one thousand nine hundred fifty. Whenever such
9 refunding bonds are issued, all taxes and charges hereto-
10 fore imposed, collected and pledged for the payment of
11 such bonds heretofore issued, are hereby dedicated and
12 may be pledged for the payment of such refunding bonds:
13 *Provided however,* That such bonds issued under the pro-
14 visions of section one of the article may be funded or re-
15 funded at any time in the manner provided in this para-
16 graph for funding or refunding bonds of the "Veterans
17 Bonus Amendment of one thousand nine hundred fifty".

CHAPTER 168

(House Bill No. 363—By Mr. Speaker, Mr. Flannery)

AN ACT providing for the payment of the Korean veterans bonus and for the administration thereof, prohibiting certain acts with respect thereto, and prescribing penalties for the violation of such provisions.

[Passed March 8, 1957; in effect July 1, 1957. Approved by the Governor.]

Payment of Korean Veterans Bonus.

Section

1. Department of veterans affairs to administer act; veterans advisory committee.
2. Veterans entitled to bonus.
3. Payment of bonus to relatives of deceased veterans.
4. Amount of bonus.
5. Limitation on time of filing application.
6. Determination by director of the validity of claims.
7. Review board hearing.
8. Court review of final orders of review board.
9. Payments from Korean veterans bonus fund; balance to Korean veterans bonus sinking fund.
10. Penalty for making false statements.
11. Penalty for filing more than one application.
12. Bonus payment not subject to taxation or legal process; claim therefor not assignable.
13. Collection of fees or charges; penalty.

Be it enacted by the Legislature of West Virginia:

Section 1. *Department of Veterans Affairs to Administer Act; Veterans Advisory Committee.*—The West Virginia department of veterans affairs is hereby designated as the state agency to administer the provisions of this act. The director of the department of veterans affairs shall do all things necessary for the proper administration thereof. The director, with the advice and consent of the veterans council, may adopt and promulgate such reasonable rules and regulations, not inconsistent herewith, as may be necessary to effect the purposes of this act, including regulations concerning evidence or other data required to establish eligibility and qualifications for the bonus as herein provided. The director shall prepare and furnish all necessary forms which shall be distributed by him through such veterans and other organizations as he may deem most practicable.

The department of veterans affairs shall, insofar as possible, utilize the personnel, supplies and equipment of the department in the administration of this act. The department may employ such additional personnel as may be necessary for the proper administration of this act, subject, however, to the approval of the commissioner of finance and administration, who must also approve the salaries and other compensation for such personnel.

The governor may appoint a veterans advisory committee, consisting of representatives of veterans organizations chartered under acts of Congress and operating in this state, to advise and counsel with the director in the administration of this act. Such committee shall meet on the call of the director at such times and places as he may specify.

Sec. 2. *Veterans Entitled to Bonus.*—In grateful recognition of their services in time of grave national emergency, a cash bonus as herein provided shall be paid to veterans of the Korean conflict. Such bonus shall be paid to all persons who rendered active service in the armed forces of the United States during the Korean conflict between the twenty-seventh day of June, one thousand

8 nine hundred fifty, and the twenty-seventh day of July,
9 one thousand nine hundred fifty-three, both dates inclu-
10 sive, who were bona fide residents of the state of West
11 Virginia at the time of their entry into such service and
12 for a period of at least six months immediately prior
13 thereto, who were not dishonorably discharged from such
14 forces, and who within the period specified actively served
15 in such armed forces for a period of at least ninety days.
16 A cash bonus shall also be paid to any disabled veteran,
17 otherwise qualified, who was discharged within ninety
18 days after entering the services because of a service-
19 connected disability.

20 As used in this act, "armed forces" means the army,
21 navy, air force, marine corps and coast guard of the United
22 States.

23 As used in this act, "active duty" means full-time
24 active military or naval service with full duty pay status,
25 but shall not include time absent from leave, absent over
26 leave, while in confinement or any other time classified
27 by the respective branches of the armed forces as "bad"
28 or "lost" time.

Sec. 3. *Payment of Bonus to Relatives of Deceased*
2 *Veterans.*—The bonus to which any deceased veteran
3 would have been entitled, had he lived, shall be paid
4 only to the following surviving relatives of such veteran,
5 provided that such relatives are residents of this state
6 when application for payment is made: Any unremarried
7 widow, or if none, any child or children under the age
8 of sixteen, or if none, any dependent parent or parents.

9 As used in this act, "unremarried widow" means the
10 female spouse of a deceased veteran, legally married to
11 the veteran at the time of his death, who has not re-
12 married at the time of making application.

13 As used in this act, "child" means the natural son
14 or daughter of the deceased veteran upon whose
15 service eligibility is derived and who has not attained
16 the age of sixteen years at the time of making applica-
17 tion.

18 As used in this act, "parent" means the father or mother

19 by blood of the deceased veteran upon whose service eligi-
20 bility is derived. "Dependency" of such parent shall be
21 deemed to exist when such parent's taxable income for
22 the twelve months preceding application is less than two
23 thousand dollars. If surviving parents live together, they
24 shall file joint applications and, in such case, "depend-
25 ency" shall be deemed to exist if their combined taxable
26 income for the twelve months preceding date of appli-
27 cation is less than thirty-five hundred dollars.

Sec. 4. *Amount of Bonus.*—The amount of such cash
2 bonus shall be calculated on the basis of ten dollars for
3 each month, or major fraction thereof, served during the
4 prescribed period within the territorial limits of the
5 forty-eight states and the District of Columbia, and fifteen
6 dollars for each month or major fraction thereof, served
7 during the prescribed period outside such limits. Such
8 bonus, however, shall in no case exceed three hundred
9 dollars for those who served only within the territorial
10 limits specified, and four hundred dollars for those who
11 served outside such limits.

Sec. 5. *Limitation on Time of Filing Application.*—No
2 bonus shall be paid to any person, otherwise entitled
3 thereto, unless application therefor shall be filed with the
4 department of veterans affairs on or before the thirtieth
5 day of June, one thousand nine hundred fifty-nine. No
6 warrant for the payment of any bonus shall be issued
7 or reissued to any applicant after the thirty-first day of
8 December, one thousand nine hundred sixty-one.

Sec. 6. *Determination by Director of the Validity of*
2 *Claims.*—Upon receipt of an application for benefits here-
3 under, the director shall, as soon as may be practicable,
4 determine the validity of the claim. As soon as such
5 determination has been made, the director shall mail to
6 the applicant a warrant in the amount of the bonus pay-
7 ment he finds to be due. If the determination is made
8 that no benefits hereunder are payable then the director
9 shall mail to the applicant a notification denying benefits
10 and citing the reason or reasons for such denial.
11 Any applicant who is aggrieved by any such determi-

12 nation of the director may demand that his claim be re-
13 viewed as hereinafter provided. Such demand for review
14 shall be filed with the director, in writing, within sixty
15 days after the date on which the warrant of award or
16 notice of denial was mailed to the applicant. Upon receipt
17 of such demand for review the director shall certify the
18 demand, together with all files and records relating to
19 the application, to a board of review. Unless such demand
20 for review is duly filed with the director, all findings and
21 orders of the director with reference to such claim shall
22 be final and conclusive upon the applicant.

2 *Sec. 7. Review Board Hearing.*—For the purposes of
3 this act, the veterans council of the department of veterans
4 affairs is hereby designated as the “Korean Veterans
5 Bonus Review Board”. Under rules and regulations
6 adopted by the veterans council, any one or more mem-
7 bers of a board of review may conduct hearings on a
8 demand by an applicant for review of the determination
9 of the director, and may report his or their findings
10 thereon, together with the entire record of the case, to
11 the review board for its final determination and decision.

12 If the number of demands for review hereunder shall
13 become too numerous to be handled expeditiously by
14 the veterans council, the governor, upon the recom-
15 mendation of the council, may appoint one or more
16 additional boards of review. Additional boards shall con-
17 sist of not more than three members, one of whom shall
18 be a lawyer, who shall have the same qualifications as
19 the members of the veterans council, and who shall serve
20 at the will and pleasure of the governor for such time
21 as may be necessary for the purposes of this act. Each
22 such additional review board shall have the same author-
23 ity and its final decision shall have the same force and
24 effect as that of the veterans council under the provisions
25 of this act.

26 Upon receipt from the director of the files and records
27 relating to any claim, the board, or a member or mem-
28 bers thereof as the case may be, shall fix a time and
29 place for a hearing thereon. The applicant shall be noti-
fied of the time and place fixed and shall be informed

30 of his right to demand a public hearing if he so desires.
31 At the hearing the claim shall be reexamined *de novo*
32 and the submission of additional evidence may be re-
33 quired or permitted. Upon the conclusion of such hearing
34 the board of review, on the basis of the record and the
35 recommendations, if any, made by the member or mem-
36 bers who conducted the hearing, shall enter its order
37 reversing, affirming or modifying the determination made
38 by the director.

39 Any order so entered by the board shall be final and
40 conclusive upon the applicant and the director unless
41 an application is made for review to the supreme court of
42 appeals as hereinafter provided. The board shall mail
43 to the applicant and to the director a copy of the order
44 entered by it in each case.

45 All notices and correspondence shall be directed to
46 the applicant at the address listed on his application
47 and all notices and correspondence to the director shall
48 be addressed to him at his office in the city of Charleston.

49 The director shall provide for each review board such
50 clerical and stenographic assistants and such supplies as
51 may be necessary for the performance of its duties.

52 Each member of a review board shall receive as com-
53 pensation fifteen dollars per day for each day actually
54 spent in the performance of his duties under the provis-
55 ions of this act, and shall be reimbursed for all traveling
56 and other expenses necessarily incurred by him in the
57 performance of such duties.

Sec. 8. Court Review of Final Orders of Review Board.—

2 Within thirty days after notification of an entry of any
3 final order of a board of review, the director or any ap-
4 plicant may petition for review of such order by the su-
5 preme court of appeals in the same manner as is provided
6 by section four, article five, chapter twenty-three of the
7 code, for judicial review of final decisions by the work-
8 men's compensation appeal board.

Sec. 9. Payments from Korean Veterans Bonus Fund;

2 *Balance to Korean Veterans Bonus Sinking Fund.—* All
3 bonus payments and other expenses and costs of adminis-

4 tering this act shall be paid from the Korean veterans
5 bonus fund, otherwise established by law. Any balance
6 remaining in such fund after all such bonus payments and
7 other expenses and costs have been made shall be trans-
8 ferred to the Korean veterans bonus sinking fund and
9 used solely for the payment of the bonus bonds.

Sec. 10. *Penalty for Making False Statements.*—Any
2 person who shall knowingly make any false or misleading
3 statement or representation, oral or written, in support of
4 any claim for a bonus under the provisions of this act,
5 shall be guilty of a felony, and upon conviction thereof,
6 shall be punished by imprisonment in the penitentiary for
7 not less than one nor more than five years.

Sec. 11. *Penalty for Filing More than One Application.*—
2 Only one application shall be filed by any veteran or by
3 any person who claims that he is entitled to a share of the
4 bonus payable in the case of any deceased veteran. Any
5 person who, with intent to defraud, violates the provisions
6 of this section shall be guilty of a felony, and upon con-
7 viction thereof shall be punished by a fine of not less than
8 five hundred dollars nor more than one thousand dollars,
9 or by imprisonment in the penitentiary for not less than
10 one nor more than two years, or by both such fine and im-
11 prisonment.

Sec. 12. *Bonus Payment not Subject to Taxation or Legal
2 Process; Claim Therefor not Assignable.*—The bonus pro-
3 vided by this act is hereby declared to be a gift or gratu-
4 ity made as a token of appreciation for the service ren-
5 dered by the veteran to the people of West Virginia in
6 time of grave national emergency and is in no sense com-
7 pensation for such services. The money received as such
8 bonus shall be exempt from taxation and such money, or
9 any claim therefor, shall not be subject to garnishment,
10 attachment or levy of execution. A claim for payment
11 of a bonus under the provisions of this act shall not be
12 assignable for any purpose whatsoever.

Sec. 13. *Collection of Fees or Charges; Penalty.*—No fee
2 or charge shall be made by any person, attorney, agent
3 or representative for any service in connection with the

4 filing of an application for payment of a bonus hereunder,
5 except such fees as are provided by law for the perform-
6 ance of official duties by a duly elected or appointed offi-
7 cer of this state or a political subdivision thereof. No
8 person shall, for a consideration, discount or attempt to
9 discount or advance money upon any warrant issued for
10 payment of any bonus provided for in this act.

11 If an applicant shall employ an attorney to represent
12 him in connection with the prosecution of his claim before
13 a board of review, or before the supreme court of appeals,
14 the attorney shall file with the director an executed copy
15 of his contract of employment, and the total amount of
16 the fee therein provided shall not exceed twenty-five per
17 cent of the amount under dispute.

18 Any person who violates any provision of this section
19 shall be guilty of a misdemeanor, and, upon conviction
20 thereof, shall be punished by a fine of not less than twenty-
21 five dollars nor more than five hundred dollars, or by im-
22 prisonment for not less than ten days nor more than
23 twelve months, or by both such fine and imprisonment.

CHAPTER 169

(House Bill No. 27—By Mr. Hubbard)

AN ACT to amend and reenact section two, article one, chapter forty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to who may not make will.

[Passed February 12, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 1. Capacity to Make, and Requisites and Validity of, a Will.

Section

2. Who may not make will.

Be it enacted by the Legislature of West Virginia:

That section two, article one, chapter forty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2. *Who May Not Make Will.*—No person of un-
2 sound mind, or under the age of eighteen years, shall be
3 capable of making a will.

CHAPTER 170

(House Bill No. 268—By Mr. Speaker, Mr. Flannery)

AN ACT to amend and reenact sections six and ten, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to benefits and procedures under the workmen's compensation law.

[Passed March 8, 1957; in effect ninety days from passage. Approved by the Governor.]

Article 4. Disability and Death Benefits.

Section

6. Classification of disability benefits.
10. Classification of death benefits; "dependent" defined.

Be it enacted by the Legislature of West Virginia:

That sections six and ten, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

Section 6. *Classification of Disability Benefits.*—Where
2 compensation is due an employee under the provisions
3 of this chapter for a personal injury other than silicosis,
4 such compensation shall be as provided in the following
5 schedule:
6 (a) If the injury causes temporary total disability,

7 the employee shall receive during the continuance there-
8 of sixty-six and two-thirds per cent of his average weekly
9 earnings, not to exceed a maximum of thirty-three dol-
10 lars a week nor to be less than a minimum of twenty
11 dollars a week.

12 (b) Subdivision (a) shall be limited as follows: Ag-
13 gregate award for a single injury causing temporary dis-
14 ability shall be for a period not exceeding two hundred
15 eight weeks.

16 (c) If the injury causes permanent disability, the per-
17 centage of disability to total disability shall be determined
18 and the award computed and allowed as follows:

19 For permanent disability of from one per cent to eighty-
20 four per cent, inclusive, sixty-six and two-thirds per cent
21 of the average weekly earnings for a period to be com-
22 puted on the basis of four weeks compensation for each
23 per cent of disability determined.

24 For a disability of eighty-five to one hundred per cent,
25 sixty-six and two-thirds per cent of the average weekly
26 earnings during the remainder of life.

27 (d) If the injury results in the total loss by severance
28 of any of the members named in this subdivision, the per-
29 centage of disability shall be determined in accordance
30 with the following table, and award made as provided in
31 subdivision (c) of this section:

32 The loss of a great toe shall be considered a ten per cent
33 disability.

34 The loss of a great toe (one phalanx) shall be considered
35 a five per cent disability.

36 The loss of other toes shall be considered a four per
37 cent disability.

38 The loss of other toes (one phalanx) shall be considered
39 a two per cent disability.

40 The loss of all toes shall be considered a twenty-five
41 per cent disability.

42 The loss of fore part of foot shall be considered a thirty
43 per cent disability.

44 The loss of foot shall be considered a thirty-five per
45 cent disability.

46 The loss of leg shall be considered a forty-five per cent
47 disability.

48 The loss of thigh shall be considered a fifty per cent
49 disability.

50 The loss of thigh at hip joint shall be considered a sixty
51 per cent disability.

52 The loss of little or fourth finger (one phalanx) shall
53 be considered a three per cent disability.

54 The loss of little or fourth finger shall be considered a
55 five per cent disability.

56 The loss of ring or third finger (one phalanx) shall be
57 considered a three per cent disability.

58 The loss of ring or third finger shall be considered a
59 five per cent disability.

60 The loss of middle or second finger (one phalanx) shall
61 be considered a three per cent disability.

62 The loss of middle or second finger shall be considered
63 a seven per cent disability.

64 The loss of index or first finger (one phalanx) shall be
65 considered a six per cent disability.

66 The loss of index or first finger shall be considered a
67 ten per cent disability.

68 The loss of thumb (one phalanx) shall be considered
69 a twelve per cent disability.

70 The loss of thumb shall be considered a twenty per
71 cent disability.

72 The loss of thumb and index finger shall be considered
73 a thirty-two per cent disability.

74 The loss of index and middle finger shall be considered
75 a twenty per cent disability.

76 The loss of middle and ring finger shall be considered
77 a fifteen per cent disability.

78 The loss of ring and little finger shall be considered
79 a ten per cent disability.

80 The loss of thumb, index, and middle finger shall be
81 considered a forty per cent disability.

82 The loss of index, middle and ring finger shall be con-
83 sidered a thirty per cent disability.

84 The loss of middle, ring and little finger shall be con-
85 sidered a twenty per cent disability.

86 The loss of four fingers shall be considered a thirty-
87 two per cent disability.

88 The loss of hand shall be considered a fifty per cent
89 disability.

90 The loss of forearm shall be considered a fifty-five per
91 cent disability.

92 The loss of arm shall be considered a sixty per cent
93 disability.

94 The total and irrecoverable loss of the sight of one eye
95 shall be considered a thirty-three per cent disability, and
96 the injured employee shall be entitled to compensation
97 for a period of one hundred and thirty-two weeks.

98 For the partial loss of vision in one, or both eyes, the
99 percentage of disability shall be determined by the com-
100 missioner, using as a basis the total loss of one eye.

101 (e) Should a claimant to whom has been made a per-
102 manent partial award of from one per cent to eighty-
103 four per cent, both inclusive, die from sickness of non-
104 compensable injury, the unpaid balance of such award
105 shall be paid to claimant's dependents as defined in this
106 chapter, if any; such payment to be in the same install-
107 ments that would have been paid to claimant if living:
108 *Provided, however,* That no payment shall be made to
109 any widow of such claimant after her remarriage, and
110 that this liability shall not accrue to the estate of such
111 claimant and shall not be subject to any debts of, or
112 charges against, such estate.

113 (f) The award for permanent disabilities intermedi-
114 ate to those fixed by the foregoing schedule and perma-
115 nent disability of from one per cent to eighty-four per
116 cent shall be in the same proportion and shall be com-
117 puted and allowed by the commissioner.

118 (g) The percentage of all permanent disabilities other
119 than those enumerated in subdivisions (c), (d), (e) and
120 (f) of this section shall be determined by the commis-
121 sioner, and award made in accordance with the provi-
122 sions of subdivision (c).

123 (h) Compensation payable under any subdivision of
124 this section shall be limited as follows: Not to exceed a
125 maximum of thirty-three dollars a week, nor to be less
126 than a minimum of twenty dollars a week.

127 (i) Where an injury results in temporary total dis-
128 ability for which compensation is awarded under sub-
129 division (a) of this section and such injury is later de-
130 termined permanent partial disability under subdivision
131 (c), the amount of compensation so paid shall be con-
132 sidered as payment of the compensation payable for such
133 injury in accordance with the schedule in subdivision
134 (c). Compensation, either total temporary or permanent
135 partial, under this section shall be payable only to the
136 injured employee and the right thereto shall not vest in
137 his or her estate, except that any unpaid compensation
138 which would have been paid or payable to the employee
139 up to the time of his death, if he had lived, shall be paid
140 to the dependents of such injured employee if there be
141 such dependents at the time of death.

142 (j) The following permanent disabilities shall be con-
143 clusively presumed to be total in character:

144 Loss of both eyes or the sight thereof.

145 Loss of both hands or the use thereof.

146 Loss of both feet or the use thereof.

147 Loss of one hand and one foot or the use thereof.

148 In all other cases permanent disability shall be deter-
149 mined by the commissioner in accordance with the facts
150 in the case, and award made in accordance with the pro-
151 visions of subdivision (c).

Sec. 10. *Classification of Death Benefits; "Dependent"*

2 *Defined.*—In case a personal injury other than silicosis
3 or other occupational disease, suffered by an employee in
4 the course of and resulting from his employment, causes
5 death within a period of six years and disability is con-
6 tinuous from date of such injury until date of death, or if
7 death results from determined third stage silicosis or from
8 any other occupational disease within six years from the
9 date of the last exposure to the hazard of silicon dioxide
10 dust or to the other particular occupational hazard in-

11 involved, as the case may be, the benefits shall be in the
12 amounts and to the person as follows:

13 (a) If there be no dependents, the disbursements shall
14 be limited to the expense provided for in sections three
15 and four of this article.

16 (b) If the deceased employee leaves a dependent
17 widow or invalid widower, the payment shall be sixty-
18 five dollars a month until death or remarriage of such
19 widow or widower, and in addition seventeen dollars
20 fifty cents a month for each child under eighteen years
21 of age, to be paid until such child reaches such age, or,
22 if an invalid child, twenty dollars a month, to continue as
23 long as such child remains an invalid: *Provided, however,*
24 That if such widow or invalid widower shall remarry
25 within ten years from the date of the death of such em-
26 ployee, such widow or widower shall be paid at the time
27 of remarriage twenty per cent of the amount that would
28 be due for the period remaining between the date of such
29 remarriage and the end of ten years from the date of
30 death of such employee, and such widow or widower
31 shall be advised in writing by the commissioner of his or
32 her rights under this proviso at the time of making the
33 original award: *Provided further,* That if upon investi-
34 gation and hearing, as provided in article five of this
35 chapter, it shall be ascertained that such widow or widow-
36 er is living with a man or woman, as the case may be, as
37 man and wife and not married, or that the widow is liv-
38 ing a life of prostitution, the commissioner shall stop the
39 payments of the benefits herein provided to such widow
40 or widower.

41 If the deceased employee be a widow or widower and
42 leaves a child or children under the age of eighteen years,
43 the payments shall be twenty dollars a month to each
44 child until he or she reaches the age of eighteen years.

45 In all awards of compensation to children, unless other-
46 wise provided herein, the award shall be until they reach
47 the age of eighteen years or until their death prior
48 thereto.

49 (c) If the deceased employee leaves no dependent
50 widow or widower and leaves a wholly dependent father

51 or mother, he or she shall be paid the sum of fifty dollars
52 a month, payments to continue until death, and if there
53 be no widow or widower and both the father and mother
54 are wholly dependent, then a joint award shall be made
55 to the father and mother in the sum of fifty dollars a
56 month until death. Upon the death of either the father or
57 mother in any case in which a joint award has been made
58 to them, the full award of fifty dollars a month shall be
59 paid to the survivor until his or her death.

60 (d) If the deceased employee leaves no dependent
61 widow or widower or wholly dependent father or mother
62 but there are other wholly dependent persons, as defined
63 in paragraph (f) of this section, the payment shall be
64 fifty dollars a month, to continue for six years after the
65 death of the deceased, except as otherwise provided
66 herein.

67 (e) If the deceased employee leaves no dependent
68 widow or widower, child under eighteen years of age, or
69 wholly dependent person, but there are partially de-
70 pendent persons at the time of death, the payment shall
71 be twenty dollars a month, to continue for such portion
72 of the period of six years after the death, as the com-
73 missioner may determine, but no such partially dependent
74 person shall receive compensation payments as a result
75 of the death of more than one employee.

76 Compensation under subdivisions (b), (c), (d) and
77 (e) hereof shall, except as may be specifically provided
78 to the contrary therein, cease upon the death of the de-
79 pendent, and the right thereto shall not vest in his or her
80 estate.

81 (f) Dependent, as used in this chapter, shall mean a
82 widow, invalid widower, child under eighteen years of
83 age, invalid child or a posthumous child, who, at the time
84 of the injury causing death, is dependent in whole or in
85 part for his or her support upon the earnings of the em-
86 ployee; also the following persons who are and continue
87 to be residents of the United States or its territorial pos-
88 sessions: Stepchild under eighteen years of age, child
89 under eighteen years of age legally adopted prior to the
90 injury causing death, father, mother, grandfather or

91 grandmother, who, at the time of the injury causing death,
92 is dependent in whole or in part for his or her support
93 upon the earnings of the employee; an invalid brother
94 or sister wholly dependent for his or her support upon
95 the earnings of the employee at the time of the injury
96 causing death.

CHAPTER 171

(House Bill No. 127—By Mr. Myles)

AN ACT to amend and reenact section two, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to workmen's compensation appeal board.

[Passed March 4, 1957; in effect July 1, 1957. Approved by the Governor.]

Article 5. Review.

Section

2. Workmen's compensation appeal board.

Be it enacted by the Legislature of West Virginia:

That section two, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2. *Workmen's Compensation Appeal Board.*—

2 There shall be a board to be known as the "Workmen's
3 Compensation Appeal Board," which shall be referred to
4 in this chapter as the "board," to be composed of three
5 members, none of whom shall be a contributor to the
6 compensation fund or in any way connected with a con-
7 tributor thereto and none of whom shall be a beneficiary
8 of the compensation fund or in any way connected with a
9 beneficiary thereof. Two members of such board shall be
10 of opposite politics to the third, and all three shall be

11 citizens of this state who have resided therein for a period
12 of at least five years. All members of the board shall be
13 appointed by the governor for a term of six years. The
14 governor is hereby vested with power to remove any mem-
15 ber of the board according to section four, article six,
16 chapter six of this code. They shall each receive an
17 annual salary of three thousand six hundred dollars,
18 payable in monthly installments, and shall also be entitled
19 to reasonable and necessary traveling and other expenses
20 incurred while actually engaged in the performance of
21 their duties. The governor shall designate one of the mem-
22 bers of the board as chairman thereof, and the board
23 shall meet at the capitol or at such other places throughout
24 the state as it may deem proper, at regular sessions com-
25 mencing on the first Tuesday in February, April, June,
26 August, October and December, and continuing as long
27 as may be necessary for the proper and expeditious trans-
28 action of the business before it. All clerical services re-
29 quired by the board shall be paid for by the compensation
30 commissioner from any funds at his disposal. The board
31 shall, from time to time, compile and promulgate such
32 rules of practice and procedure as to it shall appear proper
33 for the prompt and efficient discharge of its business and
34 such rules shall be submitted to the supreme court of
35 appeals for approval, and if approved by such court shall
36 have the same force and effect as the approved rules of
37 procedure of circuit courts. The board shall employ such
38 clerical staff as may be necessary for the efficient conduct
39 of its business but the number of such employees shall
40 not exceed two. Salaries of the board, and its employees,
41 and all of its necessary operating expense shall be paid
42 from the workmen's compensation fund. The board shall
43 submit its annual budget to the state compensation com-
44 missioner for inclusion as a separate item in the budget
45 estimates prepared by him annually, and, within the limits
46 of such budget, all expenses of the board shall be by
47 requisition to the commissioner. Salaries of the employees
48 of the board shall be fixed by the board.

CHAPTER 172

(Senate Bill No. 248—By Mr. Martin)

AN ACT authorizing the board of education of Berkeley county to reimburse Elizabeth DeHaven for medical, hospital and other necessary expenses incurred as the result of the negligence of said board of education of Berkeley county, and to declare a moral obligation to exist on the part of said board of education in favor of said Elizabeth DeHaven.

WHEREAS, On the seventh day of September, one thousand nine hundred fifty-six, Elizabeth DeHaven, a student of Burke street school in Berkeley county, West Virginia, was present on the playground of said school, under authorization of the authorities of said school; and

WHEREAS, While there present upon said playground the said Elizabeth DeHaven was seriously injured by a steel window sash, which was dislodged from a second-story window of the school building, falling to the playground, striking the said Elizabeth DeHaven; and

WHEREAS, As a result of being so struck the said Elizabeth DeHaven suffered severe injuries, and necessarily incurred certain medical, hospital and other expenses; and

WHEREAS, Said Elizabeth DeHaven was in no sense at fault on the premises; therefore,

[Passed March 1, 1957; in effect from passage. Approved by the Governor.]

Section

1. Authorization for reimbursement.
2. Finding of moral obligations.

Be it enacted by the Legislature of West Virginia:

Section 1. *Authorization for Reimbursement.*—The
2 board of education of Berkeley county, West Virginia, is
3 hereby authorized, as in its discretion it may see fit, to
4 pay the necessary expenses incurred by Elizabeth De-
5 Haven and/or her parents, for hospital, medical and other

6 treatment necessitated as a result of the said Elizabeth
7 DeHaven being injured by a steel window sash becoming
8 dislodged from a second-story window of the Burke street
9 school, Berkeley county, West Virginia, on September
10 seven, one thousand nine hundred fifty-six, and falling
11 upon her, which injury was caused by the negligence of
12 said county board of education: *Provided, however,* That
13 the authorization hereby granted to said county board of
14 education shall not exceed the sum of four hundred fifty-
15 three dollars and seventy cents.

Sec. 2. *Finding of Moral Obligation.*—It is hereby de-
2 clared to be the finding of the Legislature that a moral
3 obligation on the part of the board of education of Berke-
4 ley county exists in favor of said Elizabeth DeHaven.

CHAPTER 173

(Senate Bill No. 250—By Mr. Martin)

AN ACT to amend and reenact chapter one hundred seventy-
nine, acts of the Legislature of West Virginia, regular
session, one thousand nine hundred fifty-five, authorizing
the county court of Berkeley county to transfer unex-
pended funds and surpluses in any funds of said county
into a fund to be used and expended by the county court
for county fire protection equipment, apparatus and faci-
lities and county courthouse and jail repairs, improve-
ments and additions.

[Passed February 22, 1957; in effect ninety days from passage. Approved by the
Governor.]

Section

1. Berkeley county unexpended and surplus funds; use and disposition for fire protection and courthouse and jail improvements.
2. Use of funds for courthouse and jail repairs, improvements and additions; apportionment of funds; expenditure.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred seventy-nine, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-five, be amended and reenacted to read as follows:

Section 1. Berkeley County Unexpended and Surplus Funds; Use and Disposition for Fire Protection and Courthouse and Jail Improvements.—Subject to the use and allocation of available moneys and funds, as provided in section two hereof, the county court of Berkeley county is hereby authorized and empowered to use any unexpended funds of said county and any surplus in any county fund, now or hereafter created, for the purpose of purchasing, operating and maintaining fire apparatus and equipment of all kinds used in furnishing fire protection, and is hereby further authorized and empowered to place or station such equipment and apparatus under the jurisdiction and control of the city council of the city of Martinsburg for the operation thereof. The county court of Berkeley county is also hereby authorized and empowered to use any such unexpended funds and surplus in an amount necessary for the rental of fire hydrants erected and maintained by any municipal corporation and/or sanitary district in said county. The authority hereby granted is in addition to the authority granted by chapter one hundred thirty-seven, acts of the Legislature, regular session, one thousand nine hundred forty-nine.

Sec. 2. Use of Funds for Courthouse and Jail Repairs, Improvements and Additions; Apportionment of Funds; Expenditure.—The county court of Berkeley county may, in its discretion, allocate the available moneys and funds, as provided in section one of this chapter, for such fire protection uses and services as it may find to be expedient and practicable, and is hereby authorized and empowered to use and expend the balance of all such available moneys and funds for repairs, improvements and additions to the courthouse and jail of Berkeley county. Such available moneys and funds may be used and expended for necessary or emergency repairs or improvements to the courthouse or jail and may be accumulated for other repairs and improvements and structural additions to the

15 courthouse and jail of Berkeley county: *Provided, how-*
16 *ever,* That such moneys and funds may also, in the discre-
17 tion of said court, be used or expended for the construc-
18 tion and/or purchase of an annex to said courthouse or
19 the construction and/or purchase of a new courthouse.

CHAPTER 174

(House Bill No. 457—By Mr. Tompos)

AN ACT providing for the creation and maintenance of a children's shelter in Hancock county; establishing a board of trustees to manage said shelter and prescribing the powers and duties of such board; creating a Hancock county children's shelter fund and authorizing the county court of Hancock county to transfer certain funds to the special fund so created; and to repeal chapter one hundred eighty-five, acts of the Legislature, regular session, one thousand nine hundred fifty-three, and chapter one hundred eighty-one, acts of the Legislature, regular session, one thousand nine hundred fifty-five.

[Passed March 4, 1957; in effect July 1, 1957. Approved by the Governor.]

Section

1. Hancock county children's shelter; payment of personnel.
2. Board of trustees.
3. Powers and duties of the board of trustees.
4. Officers; meetings.
5. Hancock county children's shelter fund; board of trustees children's shelter fund; disbursements.
6. Title to property.
7. Repeal of acts of the Legislature and inconsistent acts.

Be it enacted by the Legislature of West Virginia:

- Section 1. *Hancock County Children's Shelter; Payment of Personnel.*—The Hancock county court is hereby expressly authorized to create and maintain a children's shelter in Hancock county and to pay all salaries and

5 wages of all personnel employed by the county court in
6 connection therewith including that of the secretary and
7 treasurer of the board of trustees hereinafter created.

Sec. 2. *Board of Trustees.*—There is hereby created a
2 board of trustees of the children's shelter in Hancock
3 county, hereinafter referred to as the board of trustees
4 which shall be composed of nine members. Three mem-
5 bers of the board of trustees shall be the commissioners
6 of the county court of Hancock county and the six remain-
7 ing members shall be two residents from each of the
8 three magisterial districts in Hancock county, to be ap-
9 pointed by the county court of Hancock county. The
10 terms of office for the six members to be appointed by
11 the Hancock county court shall be as follows: the first
12 two appointments shall be residents of Grant district for
13 a term of two years beginning January one, nineteen hun-
14 dred fifty-eight, and thereafter the appointments from
15 Grant district shall be six years; the next two appoint-
16 ments shall be residents of Clay district for a term of four
17 years beginning January one, nineteen hundred fifty-
18 eight, and thereafter the appointments from Clay district
19 shall be for six years; the remaining two appointments
20 shall be residents of Butler district for a term of six
21 years beginning January one, nineteen hundred fifty-eight,
22 and thereafter the appointments from Butler district shall
23 be for six years. Should any appointed member remove
24 his residence from the magisterial district from which
25 appointed, his office shall be deemed vacated. The county
26 court shall fill all vacancies that may arise from time to
27 time for the unexpired terms.

Sec. 3. *Powers and Duties of the Board of Trustees.*—
2 The board of trustees shall serve as an advisory board to
3 the county court without compensation except such as
4 may be fixed by the board from time to time for the
5 secretary and treasurer and approved by the county court;
6 shall formulate policy and recommend purchases; shall
7 recommend and adopt administrative procedures; shall
8 recommend the employment of and the salaries for neces-
9 sary personnel to operate the shelter; shall recommend
10 improvements in the way of construction of permanent

11 buildings, additions or remodeling of present buildings,
12 and for the acquisition of lands; shall recommend ways
13 and means for raising revenue and the amount thereof
14 from county tax sources for the maintenance and improve-
15 ment of the said shelter; shall have the power and au-
16 thority to undertake any proper activity or campaign to
17 raise funds for the maintenance and improvement of the
18 shelter other than from the county tax revenues, and as
19 well as to solicit the public generally for contributions of
20 money or goods or items of personal property; and shall
21 have the power to do all that is necessary and proper to
22 equip, maintain, supply, and manage the shelter and to
23 do all acts and to have all powers necessary and incident
24 thereto.

Sec. 4. *Officers; Meetings.*—The officers of the said board
2 shall be a chairman, who shall be the president of the
3 county court, a vice-chairman, who shall be a nonmember
4 of the county court, a secretary, who shall be a nonmem-
5 ber of the county court, and a treasurer, who shall be a
6 nonmember of the county court.

7 The board shall meet no less than once every two months
8 and at least six times annually, beginning in the year one
9 thousand nine hundred fifty-eight, one meeting to be held
10 in January, one in June, and one in December on or be-
11 fore the fifteenth day of each of those months. The board
12 shall fix the dates of all other required meetings and may
13 fix other regular meetings and may call special meetings
14 when desired. Five members present at a meeting shall
15 constitute a quorum. No member may vote by proxy. The
16 chairman shall preside at all meetings and may vote only
17 in case of a tie.

18 The secretary shall be required to keep a permanent
19 record of all proceedings before the board and shall record
20 all action taken by the board in a bound book to be fur-
21 nished for that purpose by the county court.

22 The treasurer shall keep a permanent record of all ex-
23 penditures and receipts in a bound book to be furnished
24 for that purpose by the county court. The board shall re-
25 quire of the treasurer a bond with approved surety, the
26 cost of which shall be paid by the county court.

27 The board may promulgate and adopt and be governed
28 by all rules of procedure and administration, and by-laws
29 not inconsistent with the provisions of this act and the
30 statutes and constitution of the state of West Virginia.

Sec. 5. *Hancock County Children's Shelter Fund;*
2 *Board of Trustees Children's Shelter Fund; Disburse-*
3 *ments.*—(a) The county court of Hancock county is here-
4 by authorized and empowered to create and maintain a
5 fund to be known and designated as the Hancock county
6 children's shelter fund. In addition to the authority to
7 transfer certain surpluses from its various funds hereto-
8 fore given to the Hancock county court by legislative en-
9 actment, the county court of Hancock county is hereby
10 authorized and empowered to transfer all funds not used
11 by the various departments and administrative divisions,
12 for which funds have been and will in the future be law-
13 fully appropriated by the said county court of Hancock
14 county, to the said children's shelter fund. Said transfer
15 may be effected only on the last day of each fiscal year.
16 The said fund shall be in the custody of the sheriff of
17 Hancock county who shall be ex officio the treasurer for
18 said board and who shall be liable on his official bond to
19 the board and shall account to the board annually there-
20 for in like manner as he accounts for other public moneys.
21 All disbursements from the said fund in the custody of
22 the sheriff shall be made only on order of the county
23 court in the same manner as all other public funds are
24 disbursed.

25 (b) The county court is hereby authorized and em-
26 powered to levy annually as it does for all other county
27 funds, for the purpose of maintaining and increasing the
28 said fund for the purpose of maintenance, making im-
29 provements, additions, purchase of additional land or
30 equipment, construction and maintenance of additional
31 buildings and facilities, installation and construction and
32 improvement of recreational facilities, to, for, and in be-
33 half of said children's shelter: *Provided, however,* That
34 the county court before it shall make said levy, shall first
35 give notice of the proposed levy by publishing the same
36 in two newspapers of opposite political affiliation, having

37 a circulation in Hancock county, which notice shall be
38 published once a week for two successive weeks at least
39 ten days prior to the day the proposed levy shall be made,
40 and which notice shall contain the rate of the proposed
41 levy, the amount of money to be raised by the proposed
42 levy, the precise purpose for raising the money, and the
43 duration of the levy, and said notice shall also fix a time
44 not less than five days before the proposed levy is to be
45 made at which any property owner of the county may
46 appear in person before the county court in a meeting
47 called for that purpose to voice oral objection to the said
48 proposed levy. If more than one hundred property own-
49 ers of the county appear and protest against the proposed
50 levy, the county court shall not make the proposed levy
51 but shall submit the same to the voters of the county
52 by separate ballot at the next regular primary or general
53 election to be held in the county. If a majority of the
54 votes cast shall be in favor of the proposed levy, said
55 majority vote shall be construed as a mandate of the
56 voters binding on the county court to make the levy at
57 its next annual levy..

58 (c) The board of trustees is hereby authorized and
59 empowered to create, establish, and maintain a fund to
60 be designated as the board of trustees children's shelter
61 fund. This fund shall be under the control and custody
62 of and administered by the said board. No money raised
63 by taxation or by transfer of funds raised by taxation
64 shall be deposited in this fund. Only moneys raised by
65 or received from any source or method or means other
66 than by taxation or by transfer of funds created by taxa-
67 tion shall be deposited in the said fund. All disburse-
68 ments from the said fund in the custody and control of
69 the board of trustees shall be on authorization of the
70 said board recorded in the minutes of the said board and
71 on voucher signed by the chairman of the said board
72 and the treasurer thereof.

73 All record books of the board of trustees shall be avail-
74 able to the public for inspection at the office of the clerk
75 of the county court of Hancock County during regular
76 hours of business on the last five days of each calendar

77 month, and at no time while said books are in the office
78 of the said clerk shall anyone be permitted to remove
79 them therefrom.

Sec. 6. *Title to Property.*—All property, real and per-
2 sonal, purchased either on order of the county court or
3 on order of the board of trustees, shall become the prop-
4 erty of Hancock county under the control and custody
5 of the Hancock county court in the same manner and to
6 the same effect as all other county property.

Sec. 7. *Repeal of Acts of the Legislature and Incon-*
2 *sistent Acts.*—Chapter one hundred eighty-five, acts of
3 the Legislature, regular session, one thousand nine hun-
4 dred fifty-three and chapter one hundred eighty-one, acts
5 of the Legislature, regular session, one thousand nine
6 hundred fifty-five, and all other acts or parts of acts in-
7 consistent herewith are hereby repealed.

CHAPTER 175

(House Bill No. 402—By Mr. Robertson and Mr. White, of Harrison)

AN ACT to amend and reenact section four, chapter two hun-
dred five, acts of the Legislature of West Virginia, regular
session, one thousand nine hundred fifty-one, relating to
the salary of the judge of the criminal court of Harrison
county.

[Passed March 4, 1957; in effect ninety days from passage. Approved by the
Governor.]

Section

4. Salary of judge.

Be it enacted by the Legislature of West Virginia:

That section four, chapter two hundred five, acts of the
Legislature, regular session, one thousand nine hundred fifty-
one, be amended and reenacted to read as follows:

Section 4. *Salary of Judge.*—The judge of the criminal court of Harrison county, West Virginia, shall from and after the first day of January, one thousand nine hundred sixty-one, receive for his services a salary of ten thousand dollars per year; said amount to be paid in twelve equal monthly installments from year to year by the county court of said county, out of funds of said county, in the manner provided by statute. The salary of said judge shall continue as provided in section four, chapter two hundred five of the acts of the Legislature, regular session, one thousand nine hundred fifty-one, until the first day of January, one thousand nine hundred sixty-one.

CHAPTER 176

(Senate Bill No. 336—Originating in the
Senate Committee on the Judiciary)

AN ACT to define, establish and validate that part of the boundary line between the counties of Jackson, Wirt and Wood extending from the Ohio river to the top of Limestone ridge.

[Passed March 9, 1957; in effect ninety days from passage. Approved by the Governor.]

Section

1. Boundary line between Jackson, Wirt and Wood counties defined and established.

Be it enacted by the Legislature of West Virginia:

Section 1. *Boundary Line between Jackson, Wirt and Wood Counties Defined and Established.*—That part of the boundary line between the counties of Jackson, Wirt and Wood in the state of West Virginia, extending from the Ohio river to the top of Limestone ridge, is hereby

6 defined, established and validated to be on the following
7 courses:

8 The common boundary line between the counties of
9 Jackson and Wood shall begin on the Ohio river at the
10 mouth of Pond creek; thence, in a southeasterly direction,
11 passing the county line marker on West Virginia state
12 route number two and continuing on to the mouth of
13 Cabin fork of Pond creek; thence, continuing on the same
14 course, passing the county line marker on United States
15 route number twenty-one on Sandy creek above the mouth
16 of Ash Lick branch; thence continuing on the same course
17 to a point on Limestone ridge, at the angle in the present
18 line between Jackson and Wirt counties where such line
19 turns southward, such part of the boundary line as herein
20 defined, established and validated being a total length and
21 distance of thirteen and one-eighth miles.

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CHAPTER 177

(House Bill No. 33—By Mr. Taylor)

AN ACT to authorize the county court of Jackson county to use unexpended funds and surpluses in any funds of said county, for the purpose of creating a special building fund for the remodeling or building additions to the present county courthouse or for building separate county buildings and to expend for such purposes the fund so created.

[Passed February 18, 1957; in effect from passage. Approved by the Governor.]

Section

1. Jackson county court authorized to create a special building fund.

Be it enacted by the Legislature of West Virginia:

- Section 1. *Jackson County Court Authorized to Create a Special Building Fund.*—The county court of Jackson county is hereby authorized and empowered from year

4 to year to use any unexpended funds of said county and
5 any surplus of any funds for the purpose of creating a
6 special building fund for the remodeling or building addi-
7 tions to the present county courthouse or for building
8 separate county buildings, and said county court is au-
9 thorized to expend for such purposes the fund so created.

CHAPTER 178

(House Bill No. 161—By Mr. Davis and Mr. Jones)

AN ACT to establish the Kanawha county public library to serve the residents of the city of Charleston and of the county of Kanawha; to create a library board with power to operate the said public library; to provide a stable method of financing the operation of the said public library; and to confer upon the employees of the said public library the benefits of chapter twenty-three, article seven-a, chapter eighteen, article seven, chapter five and chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one.

[Passed March 6, 1957; in effect ninety days from passage. Approved by the Governor.]

Section

1. Kanawha county public library created.
2. Board of directors; appointment, powers and duties.
3. Library board to be a corporation.
4. Title to property.
5. Financing.
6. Disbursements.
7. Status of employees.
8. Effect of future amendments of general law.
9. Severability.

Be it enacted by the Legislature of West Virginia:

Section 1. Kanawha County Public Library Created.—

- 2 There is hereby created a public library, which shall be
- 3 known as the "Kanawha County Public Library," which
- 4 shall be supported by the board of education of the county

5 of Kanawha, the county court of Kanawha county and the
6 city of Charleston, as a joint endeavor of the three gov-
7 erning authorities in the manner hereafter prescribed.

Sec. 2. *Board of Directors; Appointment, Powers and*
2 *Duties.*—There shall be a board of eighteen directors, who
3 shall serve without compensation. Before the first day of
4 July, one thousand nine hundred fifty-seven, the board of
5 education of the county of Kanawha shall appoint the
6 members of the said board of directors, appointing three
7 persons for one year, three persons for two years, three
8 persons for three years, three persons for four years, three
9 persons for five years and three persons for six years,
10 respectively, the term of office commencing July first, one
11 thousand nine hundred fifty-seven. Their respective suc-
12 cessors shall be appointed for a term of six years each,
13 except that any person appointed to fill a vacancy occur-
14 ring before the expiration of the term vacated shall serve
15 only for the unexpired term. A member shall be eligible
16 for reappointment. The board of education of the county
17 of Kanawha may remove any director for cause which it
18 deems sufficient. There shall be an annual meeting of the
19 board of directors on the first Friday in July in each year;
20 and a monthly meeting on the day in each month which
21 the board may designate in its by-laws. A special meeting
22 may be called by the president, the secretary or any two
23 members of the board, and shall be held only after all
24 the directors are given notice thereof. At all meetings
25 four members shall constitute a quorum. At each annual
26 meeting the board of directors shall elect, from its mem-
27 bership, a president, a vice president, a secretary and a
28 treasurer: *Provided, however,* That the librarian may be
29 elected secretary and/or treasurer. The board of directors
30 shall adopt such by-laws, rules and regulations as are
31 necessary for its own guidance and for the administration,
32 supervision and protection of the library and all property
33 belonging thereto. The board of directors shall have all
34 the powers necessary, convenient and advisable for the
35 proper operation, equipment and management of the said
36 library; and, except as otherwise specially provided in
37 this act, shall have the powers and be subject to the

38 duties which are conferred and imposed, respectively,
39 upon library directors by sections six, seven, eight, nine,
40 ten and eleven of article one of chapter ten of the code
41 of West Virginia, one thousand nine hundred thirty-one,
42 as presently amended. The board of directors shall have
43 the benefits arising out of the creation and continuance of
44 the state library commission of West Virginia.

Sec. 3. *Library Board to be a Corporation.*—The board
2 of directors of the public library hereby created shall be
3 a corporation; and as such it may contract and be con-
4 tracted with, sue and be sued, plead and be impleaded,
5 and shall have and use a common seal.

Sec. 4. *Title to Property.*—The title to all property, both
2 real and personal, now devoted to public library purposes
3 by the board of education of the county of Kanawha in
4 connection with the operation by it of a public library in
5 the city of Charleston and the county of Kanawha shall,
6 on July first, one thousand nine hundred fifty-seven, vest
7 in the public library hereby created.

Sec. 5. *Financing.*—In order to provide for the support,
2 maintenance and operation of the public library hereby
3 created, and any and all branches thereof, the supporting
4 governing authorities shall, upon written request by its
5 board of directors, levy annually as follows within the
6 respective taxing districts of the governing authorities,
7 on each one hundred dollars of assessed valuation of the
8 property taxable in the area served by it according to the
9 last assessment for state and county purposes, amounts
10 not exceeding the following amounts for the fiscal year
11 beginning July first, one thousand nine hundred fifty-
12 seven, and for each succeeding fiscal year, as follows: by
13 the board of education of the county of Kanawha, class
14 one, one cent; class two, two cents; class three, four cents;
15 class four, four cents; by the county court of Kanawha
16 county, class one, one cent; class two, two cents; class three,
17 four cents; class four, four cents; and by the city of
18 Charleston, class one, one cent; class two, two cents; class
19 four, four cents. Each year the board of directors shall
20 request each of the three governing authorities to levy

21 the same amount on each one hundred dollars of assessed
22 valuation of property of the same class, and the amount
23 of the levy on the respective classes of property shall be
24 in the same ratio as the maximum amount of levy on the
25 said classes of property authorized herein. In addition to
26 the aforesaid amounts which, upon written request by
27 the board, the governing authorities shall levy, each gov-
28 erning authority may support the public library with any
29 other general or special revenues or excess levies. All
30 income realized by the operation of the public library
31 from any sources other than the above levies shall be
32 used by the board of directors for the support and main-
33 tenance of the public library.

Sec. 6. *Disbursements.*—All money collected or appro-
2 priated by the three governing authorities for library
3 purposes shall be deposited in a special account of the
4 board of education of the county of Kanawha, and shall
5 be disbursed by it, as directed by the board of directors,
6 for salaries, wages, books, magazines, pamphlets, papers,
7 pictures, records, machinery, equipment, supplies, services
8 and other costs and expenses of operating the public
9 library and maintaining, repairing and replacing its prop-
10 erty, as well as acquiring additional property.

Sec. 7. *Status of Employees.*—All employees of the pub-
2 lic library hereby created shall be deemed to be employees
3 of the board of education of the county of Kanawha,
4 insofar as the provisions of chapter twenty-three, article
5 seven-a; chapter eighteen, article seven; chapter five and
6 chapter twenty-one-a of the code of West Virginia, one
7 thousand nine hundred thirty-one, as presently amended,
8 are concerned; and the board of education of the county
9 of Kanawha shall be reimbursed from the funds of the
10 public library for all expenditures made for premiums
11 and other costs in accordance with the provisions of the
12 said statutes.

Sec. 8. *Effect of Future Amendments of General Law.*—
2 Amendments to article one, chapter ten of the code of
3 West Virginia, one thousand nine hundred thirty-one, as
4 amended, and other general laws shall control this act

5 only to the extent that they do not conflict with the special
6 features hereof, or unless the intent to amend this act is
7 clear and unmistakable.

Sec. 9. *Severability.*—If any provision hereof is held
2 invalid, such invalidity shall not affect other provisions
3 hereof which can be given effect without the invalid pro-
4 vision, and to this end the provisions of this act are de-
5 clared to be severable.

CHAPTER 179

(House Bill No. 215—By Mr. Brotherton)

AN ACT to amend and reenact section thirty-seven, chapter twenty-five, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended and reenacted by chapter one hundred eighty-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-three, relating to the probation staff of the intermediate court of Kanawha county.

[Passed February 19, 1957; in effect July 1, 1957. Approved by the Governor.]

Section

37. Probation staff; probation officers, chief probation officer, clerical and secretarial assistants.

Be it enacted by the Legislature of West Virginia:

That section thirty-seven, chapter twenty-five, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended and reenacted by chapter one hundred eighty-nine, acts of the Legislature, regular session, one thousand nine hundred fifty-three, be amended and reenacted to read as follows:

Section 37. *Probation Staff: Probation Officers, Chief
2 Probation Officer, Clerical and Secretarial Assistants.*—

3 The court is authorized and empowered to appoint such
4 probation officers, chief probation officer, clerical, secre-
5 tarial and psychiatric assistants as shall enable the court
6 to discharge all the duties required of it under the pro-
7 visions of this act and the general laws of the state. The
8 judge may appoint probation officers, chief probation
9 officer, necessary clerical and secretarial assistants and
10 other necessary assistants including a psychiatrist to be
11 paid by the county court. Such appointments shall be
12 made by the judge and the appointees shall serve during
13 the pleasure of the judge.

14 The probation officers shall receive as compensation an
15 annual salary of not less than four thousand two hundred
16 dollars nor more than six thousand dollars, to be deter-
17 mined by the judge. The chief probation officer shall re-
18 ceive as compensation an annual salary of not less than
19 four thousand eight hundred dollars nor more than seven
20 thousand two hundred dollars, to be determined by the
21 judge. In addition to the annual salaries herein provided
22 for the probation officers and the chief probation officer,
23 they shall be reimbursed by the county court their neces-
24 sary expenses actually incurred in the performance of
25 official duties, including a mileage allowance for their auto-
26 mobiles driven in the performance of their official duties,
27 the rate of which is to be fixed by the judge and approved
28 by the county court. The appointment of probation
29 officers, chief probation officer, clerical and secretarial
30 assistants, and other necessary help, including a psychia-
31 trist, when made by the judge shall be entered by the order
32 of the court. A copy of the order of appointment shall be
33 transmitted to the clerk of the county court. Thereupon
34 the county court shall make provisions for payment and
35 pay the salaries of said appointees as shown by the order
36 of appointment in equal monthly instalments. Expenses
37 and mileage accounts of the probation officers and chief
38 probation officer shall be itemized and verified and pre-
39 sented to and paid by the county court, if such accounts
40 are approved by the judge. The county court shall provide
41 such office space, equipment and supplies for the probation
42 staff, clerical and secretarial and psychiatric assistance as

43 the judge shall deem necessary and adequate: *Provided*,
44 That the appointing judge shall first obtain the approval of
45 the county court of the expenses to be incurred and the
46 salary to be paid any appointee, which approval shall be
47 discretionary with the county court and shall be required
48 before any appointment made hereunder becomes effec-
49 tive.

CHAPTER 180

(Senate Bill No. 217—By Mr. Carey and Mr. Anderson)

AN ACT to amend and reenact chapter one hundred eighty-nine, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-five, relating to the authorization of the judge of the thirteenth judicial circuit of West Virginia to appoint a law assistant, fixing his qualifications and salary, and requiring the county court of Kanawha county to provide the manner of payment of such salary.

[Passed February 15, 1957; in effect July 1, 1957. Approved by the Governor.]

Section

1. Law assistant for thirteenth judicial circuit; qualifications; salary.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred eighty-nine, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-five, be amended and reenacted as follows:

- Section 1. *Law Assistant for Thirteenth Judicial Circuit; Qualifications; Salary.*—On or after the effective date of this act, the judge of the circuit court of Kanawha county, West Virginia (thirteenth judicial circuit), may appoint a law assistant, who shall be a person duly licensed to practice law in this state, and who shall discharge such secretarial duties as may be assigned to him

8 by the judge; said law assistant, while acting as such,
9 shall not engage in the practice of law but shall devote
10 his time to the duties of his office, and may be removed
11 and his successor appointed at any time by the judge.
12 Said law assistant shall receive a salary of eight thousand
13 two hundred dollars per year payable monthly, and the
14 county court of Kanawha county shall annually, at its
15 levy session, provide for the payment out of general
16 county funds the amount of the salary so fixed.

CHAPTER 181

(Senate Bill No. 260—By Mr. Carey and Mr. Anderson)

AN ACT to amend and reenact section nine, chapter one hundred nine, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifteen, as last amended by chapter one hundred eighty-seven, acts of the Legislature, regular session, one thousand nine hundred fifty-five, relating to the salary of the judge of the court of common pleas of Kanawha county.

[Passed February 22, 1957; in effect July 1, 1957. Approved by the Governor.]

Section

9. Salary of judge of the court of common pleas of Kanawha county.

Be it enacted by the Legislature of West Virginia:

That section nine, chapter one hundred nine, acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifteen, as last amended by chapter one hundred eighty-seven, acts of the Legislature, regular session, one thousand nine hundred fifty-five, be amended and reenacted to read as follows:

Section 9. *Salary of Judge of the Court of Common Pleas of Kanawha County.*—The said judge shall, from and after the first day of January, one thousand nine

4 hundred sixty-five, receive for his services a salary in the
5 amount of thirteen thousand five hundred dollars per
6 annum, to be paid in monthly installments out of the
7 county treasury of Kanawha county, out of funds of said
8 treasury, in the manner provided by statute. The salary
9 of said judge shall continue as provided in chapter one
10 hundred eighty-seven, acts of the Legislature, regular
11 session, one thousand nine hundred fifty-five, until the
12 first day of January, one thousand nine hundred sixty-
13 five.

CHAPTER 182

(Senate Bill No. 259—By Mr. Carey and Mr. Anderson)

AN ACT to amend and reenact section four, chapter one hundred seventy-two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred forty-seven, as last amended by chapter one hundred eighty-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-five, relating to the salary of the judge of the domestic relations court of Kanawha county.

[Passed February 22, 1957; in effect July 1, 1957. Approved by the Governor.]

Section

4. Salary.

Be it enacted by the Legislature of West Virginia:

That section four, chapter one hundred seventy-two, acts of the Legislature of West Virginia, regular session, one thousand nine hundred forty-seven, as last amended by chapter one hundred eighty-eight, acts of the Legislature, regular session, one thousand nine hundred fifty-five, be amended and reenacted to read as follows:

Section 4. *Salary.*—The judge of the domestic relations
2 court of Kanawha county, West Virginia, shall, from and

3 after the first day of January, one thousand nine hundred
4 sixty-five, receive for his services a salary in the amount
5 of thirteen thousand five hundred dollars per annum, to
6 be paid in monthly installments out of the county treasury
7 of Kanawha county, out of funds of said treasury, in the
8 manner provided by statute. The salary of said judge
9 shall continue as provided in chapter one hundred eighty-
10 eight, acts of the Legislature, regular session, one thousand
11 nine hundred fifty-five, until the first day of January, one
12 thousand nine hundred sixty-five.

CHAPTER 183

(Senate Bill No. 261—By Mr. Carey and Mr. Anderson)

AN ACT to amend and reenact section nine, chapter ninety-four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven, as last amended by chapter one hundred forty-nine, acts of the Legislature, regular session, one thousand nine hundred forty-nine, relating to the salary of the judge of the intermediate court of Kanawha county.

[Passed February 22, 1957; in effect July 1, 1957. Approved by the Governor.]

Section

9. Salary of the judge of the intermediate court of Kanawha county, West Virginia.

Be it enacted by the Legislature of West Virginia:

That section nine, chapter ninety-four, acts of the Legislature of West Virginia, regular session, one thousand nine hundred twenty-seven, as last amended by chapter one hundred forty-nine, acts of the Legislature, regular session, one thousand nine hundred forty-nine, be amended and reenacted to read as follows:

Section 9. *Salary of the Judge of the Intermediate Court of Kanawha County, West Virginia.*—The judge of the intermediate court of Kanawha county, West Virginia, shall, from and after the first day of January, one thousand nine hundred fifty-nine, receive for his services a salary in the amount of thirteen thousand five hundred dollars per annum, to be paid in monthly installments out of the county treasury of Kanawha county, out of funds of said treasury, in the manner provided by statute. The salary of said judge shall continue as provided in chapter one hundred forty-nine, acts of the Legislature, regular session, one thousand nine hundred forty-nine, until the first day of January, one thousand nine hundred fifty-nine.

CHAPTER 184

(House Bill No. 224—By Mr. Smith, of Lincoln)

AN ACT to authorize the county court of Lincoln county, West Virginia, to use unexpended funds of said county and any surpluses in the funds of said county and any funds derived from capital assets of the county for the purposes of repairing, improving and constructing additions to the courthouse of said county and to expend for such purposes the fund so created.

[Passed February 28, 1957; in effect from passage. Approved by the Governor.]

Section

1. Lincoln county authorized to create special fund for repair and improvement of and construction of additions to county courthouse.

Be it enacted by the Legislature of West Virginia:

- Section. 1. *Lincoln County Authorized to Create Special Fund for Repair and Improvement of and Construction of Additions to County Courthouse.*—The county court of

4 Lincoln county, West Virginia, is hereby authorized and
5 empowered from year to year to use any unexpended
6 funds of said county and any surpluses in county funds
7 and any existing surpluses or funds derived from capital
8 assets for the purpose of creating a special fund for the
9 repair and improvement of and construction of additions
10 to the county courthouse of said county. The county court
11 is hereby authorized and empowered to expend for such
12 courthouse purposes the fund so created and, when so
13 created, such fund shall not be used for any other purpose
14 or purposes.

CHAPTER 185

(Senate Bill No. 321—By Mr. Carrigan and Mr. Bowers)

AN ACT authorizing the county court of Marshall county to acquire, construct, finance, lease and convey an armory.

[Passed March 7, 1957; in effect ninety days from passage. Approved by the Governor.]

Section

1. Marshall county armory.

Be it enacted by the Legislature of West Virginia:

Section 1. *Marshall County Armory.*—The county
2 court of Marshall county is hereby authorized and empow-
3 ered to acquire and construct armories and other military
4 facilities, to make necessary provision for their mainten-
5 ance, operation and repair and to convey the same to the
6 state armory board or other proper authority authorized
7 to take title to the same upon payment of the cost of acqui-
8 sition or construction of the military portion thereof, and
9 in furtherance of such authority are specifically authorized
10 and empowered:

11 (a) To acquire, by grant, gift, condemnation or other
12 lawful means all necessary real estate, permits, easements
13 and other rights in real estate, and title to and possession
14 thereof, and to convey the same.

15 (b) To construct, equip, furnish, operate, maintain
16 and repair armories and other military facilities in ac-
17 cordance with the specifications of federal or state author-
18 ity and to further incorporate therein such additional
19 facilities as may be deemed appropriate to provide for
20 recreational, educational and cultural benefits to the com-
21 munity in which the same may be located and for the
22 furtherance of the general welfare: *Provided, however,*
23 *That such additional improvements and facilities shall not*
24 *interfere with the primary military purpose or function of*
25 *said armory or other military facility.*

26 (c) To borrow funds from the United States govern-
27 ment, the public works administration or other govern-
28 mental agency authorized to make loans, or any bank or
29 financial institution authorized by law to make loans or
30 any person for the purpose of acquiring, constructing,
31 furnishing and equipment of said armory or other military
32 facility, and for the purpose of acquiring real estate there-
33 for.

34 (d) To issue bonds for the purpose of paying the
35 cost of acquisition, construction, furnishing and equip-
36 ment of such armory or other military facility and the
37 necessary real estate therefor and to pledge a sufficient
38 amount of revenue, within the limitations of article
39 twelve, section eight of the constitution of this state and
40 within the limitations as provided by general law, to pay
41 the principal of said bonds and interest thereon within a
42 period not to exceed thirty years. Such bonds shall be
43 issued in accordance with the provisions of article one,
44 chapter thirteen of this code, and, in the case of counties,
45 in accordance with the further provisions of article three,
46 chapter seven of this code.

47 (e) To make provision for the participation of the
48 United States government or any federal agency in the
49 financing of the acquisition, construction, furnishing and
50 equipment of said armory or other military facility and

51 to accept and use any gift, grant, donation or other
52 monies provided by the United States government or any
53 federal agency or from any other source and to appro-
54 priate and use the same in the acquisition, construction,
55 furnishing and equipment of said armory or other military
56 facility.

57 (f) To make and enter into such contract or lease
58 with the adjutant general or other officer or agency of
59 this state authorized to make the same for the acquisi-
60 tion, construction, furnishing, equipment, leasing and
61 renting of any armory or other military facility acquired
62 or constructed under the provisions of this section, with
63 the privilege and authority of the adjutant general or
64 other state officer or agency of renewing said lease from
65 year to year for any period of years not exceeding
66 thirty years, and with the right to purchase said armory
67 or other military facility and the real estate on which
68 the same is situated, and to apply towards the pur-
69 chase price thereof any and all rentals paid for the use
70 thereof.

71 (g) To convey to the adjutant general, the state armory
72 board or to any other state officer or agency authorized by
73 law and designated by the adjutant general to hold title
74 thereto any armory or other military facility acquired or
75 constructed under the provisions of this section when
76 there shall have been paid either through rent or rentals
77 paid under the lease-purchase contract authorized by this
78 section or otherwise an amount agreed upon by the county,
79 and the adjutant general or other officer authorized by
80 law to make such agreement, representing that portion
81 of the total cost of such armory or other military
82 facility, exclusive of any gift, grant, donation or other
83 monies received from the United States government or
84 any federal agency or from any other source, incurred
85 in compliance with the military specifications of federal
86 or state authority.

87 (h) To do and perform any and all acts and make all
88 contracts necessary to effectuate the general purposes of
89 this section.

CHAPTER 186

(Senate Bill No. 257—By Mr. Martin)

AN ACT to authorize the city council of the city of Martinsburg to use unexpended and surplus funds arising from and produced by certain city operations and services for improvement and enlargement of the city's equipment and facilities for such operations and services, including the use of unexpended and surplus funds arising from the city's garbage collection and disposal operations for purchase of garbage collection and disposal equipment and facilities and the use of unexpended and surplus funds arising from the city's sewerage operations and services for purchase of sewerage equipment and facilities.

[Passed February 22, 1957; in effect from passage. Approved by the Governor.]

Section

1. Unexpended and surplus garbage service funds; council authority to use; purposes.
2. Unexpended and surplus sewerage funds; council authority to use; purposes.
3. Funds to be kept separate; uses limited.

Be it enacted by the Legislature of West Virginia:

Section 1. *Unexpended and Surplus Garbage Service Funds; Council Authority to Use; Purposes.*—The city council of the city of Martinsburg is hereby authorized and empowered to use and accumulate any unexpended and surplus funds arising from and produced by the city's garbage collection and disposal operations and services for purposes of purchasing and acquiring additional and improved garbage collection and disposal equipment and facilities, including automotive equipment and land areas suitable for land fills and incinerator facilities for disposition of garbage, refuse and other waste collected by the city's garbage collection operations and services.

Sec. 2. *Unexpended and Surplus Sewerage Funds; Council Authority to Use; Purposes.*—The city council of

3 the city of Martinsburg is likewise authorized and em-
4 powered to use and accumulate any unexpended and sur-
5 plus funds arising from and produced by the city's sewer-
6 age operations and services for purposes of purchasing,
7 acquiring, enlarging and improving the city's sewerage
8 equipment and facilities, including land areas for sewage
9 collection, treatment and disposal operations, facilities
10 and services.

Sec. 3. Funds to Be Kept Separate; Uses Limited.—The
2 two separate funds produced and accumulated from such
3 unexpended and surplus funds, as provided in sections
4 one and two of this act, shall be kept separate and shall
5 not be commingled and may be used and expended only
6 for the purposes for which created.

CHAPTER 187

(House Bill No. 428—By Mr. Richardson)

AN ACT to amend and reenact section four, chapter eighteen, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as last amended and reenacted by chapter one hundred ninety-four, acts of the Legislature, regular session, one thousand nine hundred fifty-three, relating to the salary of the judge of the criminal court of Mercer county, West Virginia.

[Passed February 27, 1957; in effect ninety days from passage. Approved by the Governor.]

Section

4. Salary of the judge of the criminal court of Mercer county.

Be it enacted by the Legislature of West Virginia:

That section four, chapter eighteen, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as last amended and reenacted by chapter one hundred ninety-

four, acts of the Legislature, regular session, one thousand nine hundred fifty-three, be amended and reenacted to read as follows:

Section 4. *Salary of the Judge of the Criminal Court of Mercer County.*—On and after January one, one thousand nine hundred sixty-one, the judge of said court shall for his services receive ten thousand dollars per annum, payable out of the county treasury of said county, as provided by chapter fourteen, section one, acts of the extraordinary session of the Legislature of West Virginia, one thousand nine hundred four.

CHAPTER 188

(House Bill No. 173—By Mr. Kessel)

AN ACT to authorize and empower the county court of Mineral county to use unexpended funds and surpluses in any fund of said county for the purpose of creating a special county building fund, and to use such fund for the purchase of land for the location of buildings, for the construction of new buildings and for enlarging, remodeling and improving county buildings.

[Passed February 15, 1957; in effect ninety days from passage. Approved by the Governor.]

Section

1. Authorizing the county court of Mineral county to create a special building fund.
2. Retransfer of funds.

Be it enacted by the Legislature of West Virginia:

Section 1. *Authorizing the County Court of Mineral County to Create a Special Building Fund.*—The county court of Mineral county is hereby authorized and empowered from year to year to use any unexpended funds

5 of said county and any surplus in the general county fund
6 or any other fund of said county for the purpose of cre-
7 ating a special county building fund for the purpose of
8 purchasing land for the location of county buildings, for
9 construction of new county buildings and for enlarging,
10 remodeling and improving county buildings. The said
11 county court is also authorized to expend for such pur-
12 poses the fund so created.

Sec. 2. *Retransfer of Funds.*—In cases of emergency,
2 the county court of Mineral county, by unanimous vote
3 thereof, shall be empowered to retransfer funds from the
4 special building fund herein created to the general fund.

CHAPTER 189

(House Bill No. 396—By Mr. Dyche)

AN ACT to authorize Morgan county, by and with the consent of the holders of bonds, to transfer the surplus sum of twenty thousand dollars from said county's sinking fund account created in connection with a school bond issue levied by the board of education of said county on October first, one thousand nine hundred thirty-eight, to the credit of the said county's general school fund account, and to employ and use the said sum of money to complete construction of new school plants and to refurnish and repair existing school facilities.

[Passed March 2, 1957, in effect from passage. Approved by the Governor.]

Section

1. County of Morgan authorized to transfer funds from sinking fund to general school fund, and employ and use said sum to construct and repair school facilities.

Be it enacted by the Legislature of West Virginia:

- Section 1. *County of Morgan Authorized to Transfer*
2 *Funds from Sinking Fund to General School Fund, and*

3 *Employ and Use Said Sum to Construct and Repair School*
4 *Facilities.*—The county of Morgan, by and with the con-
5 sent of the holders of the bonds issued by the board of
6 education of said county, dated October first, one thou-
7 sand nine hundred thirty-eight, payable on the first day
8 of October of each of the years of one thousand nine hun-
9 dred thirty-nine to one thousand nine hundred sixty-eight,
10 both years inclusive, is hereby authorized and empow-
11 ered to transfer the surplus sum of twenty thousand dol-
12 lars from said county's sinking fund account created in
13 connection with the aforesaid school bond levy of October
14 first, one thousand nine hundred thirty-eight, to the credit
15 of the county's general school fund account, and to employ
16 and use the said sum of money to complete construction
17 of new school plants, and to refurnish and repair existing
18 school facilities.

CHAPTER 190

(House Bill No. 434—By Mr. Whetsell)

AN ACT to authorize the county court of Preston county to use unexpended funds and surpluses in the general fund of said county, and any unexpended balances or surpluses in any special fund of said county, for the purpose of creating a special Preston Memorial hospital fund, and to expend the fund so created.

[Passed March 2, 1957, in effect from passage. Approved by the Governor.]

Section

1. Preston memorial hospital fund.

Be it enacted by the Legislature of West Virginia:

Section 1. *Preston Memorial Hospital Fund.*—The
2 county court of Preston county is hereby authorized and
3 empowered to create a special Preston Memorial hospital

4 fund, and from year to year to transfer any unexpended
5 funds and surpluses in the general county fund, and any
6 unexpended balances or surpluses in any special fund of
7 said county, to said special fund.

8 The said county court is further authorized and em-
9 powered to use the special fund herein created for main-
10 tenance and operation of the Preston Memorial hospital,
11 for the retirement of revenue bonds issued and sold for
12 the construction and equipment of said hospital, and for
13 other purposes incident to the maintenance and operation
14 of said hospital.

CHAPTER 191

(House Bill No. 470—By Mr. Ragland)

AN ACT to amend and reenact section nine, chapter two hundred five, acts of the Legislature, regular session, one thousand nine hundred fifty-five, fixing the salary of the judge of the criminal court of Raleigh county.

[Passed March 4, 1957; in effect ninety days from passage. Approved by the Governor.]

Section

9. Salary of the judge of the criminal court of Raleigh county.

Be it enacted by the Legislature of West Virginia:

That section nine, chapter two hundred five, acts of the Legislature, regular session, one thousand nine hundred fifty-five, be amended and reenacted to read as follows:

Section 9. *Salary of the Judge of the Criminal Court of Raleigh County.*—The judge of the criminal court of Raleigh county, West Virginia, shall from and after the first day of January, one thousand nine hundred sixty-three, receive for his services a salary in the amount of

- 6 nine thousand dollars per annum, to be paid in monthly
- 7 installments out of the county treasury of Raleigh county,
- 8 out of funds of said treasury, in the manner provided by
- 9 statute.

CHAPTER 192

(House Bill No. 248—By Mr. Whaley)

AN ACT to authorize and empower the circuit court of Wood county to employ a chief probation officer, assistant probation officers, clerical and secretarial assistants, and providing for the manner of payment.

[Passed February 18, 1957; in effect July 1, 1957. Approved by the Governor.]

Section

1. Probation staff of Wood county; chief probation officer; assistant probation officers; clerical and secretarial assistants; manner of payment.

Be it enacted by the Legislature of West Virginia:

Section 1. *Probation Staff of Wood County; Chief Probation Officer; Assistant Probation Officers; Clerical and Secretarial Assistants; Manner of Payment.*—The circuit court of Wood county, or the judge thereof in vacation, is hereby empowered and authorized to appoint and employ a chief probation officer, two assistant probation officers, and necessary clerical and secretarial assistants as shall enable the court to discharge all the duties required of it under the provisions of this act and the general laws of the state; the salaries and expenses of such appointees shall be paid by the county court of said county. Such appointments shall be made by the judge and the appointees shall serve during the pleasure of the judge. The chief probation officer shall receive as compensation for his or her services an annual salary of not less than

16 four thousand dollars nor more than five thousand four
17 hundred dollars, to be determined by the judge. Assistant
18 probation officers shall receive as compensation an annual
19 salary of not less than three thousand four hundred dol-
20 lars nor more than four thousand eight hundred dollars,
21 to be determined by the judge. Clerical and secretarial
22 assistants shall receive as compensation for his or her
23 services an annual salary of not less than one thousand
24 eight hundred dollars nor more than three thousand four
25 hundred dollars, to be determined by the judge. In addi-
26 tion to the annual salaries herein provided for, the chief
27 probation officer and each assistant probation officer shall
28 be reimbursed by the county court by reason of his or
29 her necessary expenses actually incurred in the perform-
30 ance of official duties. The appointment of the chief pro-
31 bation officer, assistant probation officers, clerical and sec-
32 retarial assistants, when made by the judge, shall be
33 entered by the order of the court, a copy of which order
34 of appointment shall be transmitted to the clerk of the
35 county court. Thereupon, the county court shall make
36 provision for payment and shall pay the salaries of the
37 chief probation officer, the assistant probation officers,
38 clerical and secretarial assistants, as shown by the order
39 of appointment. The annual salary provided for in said
40 order of appointment shall be paid in equal monthly in-
41 stallments. Expense and mileage accounts of the chief
42 probation officer and assistant probation officers shall be
43 itemized, verified, and presented to and paid by the county
44 court, if such accounts are approved by the judge. The
45 county court shall provide such office space, equipment
46 and supplies for the probation staff, clerical and secre-
47 tarial assistants, as the judge shall deem necessary and
48 adequate: *Provided*, That the appointing judge shall first
49 obtain the approval of the county court of the expenses
50 to be incurred and the salaries to be paid to the chief
51 probation officer, assistant probation officers, clerical and
52 secretarial assistants. Such approval shall be discretion-
53 ary with the county court and shall be required before
54 any appointment made hereunder becomes effective.

RESOLUTIONS

(Only resolutions of general interest adopted by the Legislature and the two Houses thereof during the session are included in this volume. Resolutions dealing with organization of the Legislature and other routine business, upon which action has been completed, will be found in the Journals of the Session.)

HOUSE CONCURRENT RESOLUTION NO. 8

(By Mr. Speaker, Mr. Flannery, and Mr. Seibert)

[Adopted February 18, 1957.]

Proposing a coordinated effort on the part of the State Tax Commissioner, the County Assessors, and State and Local Advisory Committees to equalize and revalue the general property of the State for tax purposes.

WHEREAS, All recent studies have shown that the assessed values of general property as a ratio of appraised values, varies widely as among counties, as among classes of property and as among individual properties; and

WHEREAS, Recent appraisal surveys have shown many weaknesses in the administration of the assessment process that must be corrected if fair and uniform valuations are to be achieved; and

WHEREAS, It is the intent and purpose of the Legislature that these weaknesses be remedied and uniformity of assessments as among counties, as among classes of property and as among individual properties be established and maintained; and

WHEREAS, It is recognized that the assessment process has always been and must remain a local process, but that this process can be strengthened and improved by the cooperation of the State Tax Commissioner and the advice and support of citizen groups; and

WHEREAS, Such strength and improvement will come from a knowledge of modern appraisal methods and experience in applying them, made available to local assessing officers and stimulated and motivated by qualified citizen groups; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

PART I

A State Advisory Committee On Equalization And Revaluation.

1. That there be established a state-wide bi-partisan Advisory Committee on the Equalization and Revaluation of General Property.

2. That such Committee shall consist of thirty representative citizens of the State, ten to be appointed by the President of the Senate; ten to be appointed by the Speaker of the House of Delegates; and ten to be appointed by the Governor of the State. Not more than five members appointed by each appointing authority shall be members of the same political party.

3. The Governor shall appoint one member of the Committee as chairman, and the Committee shall elect a vice-chairman and such other officers as it may deem appropriate.

4. The term of each member shall be four years, and vacancies on the Committee shall be filled by the original appointing authority.

5. The Committee shall meet in Charleston or elsewhere within the State as it may determine. It shall convene at least quarterly throughout the year, and at such other times as its duties may require.

6. The members of the Committee shall serve without compensation, but all legitimate expenses for travel and maintenance in connection with their duties shall be paid in as nearly equal amounts as practical from the contingent funds of the Senate and the House of Delegates.

7. It shall be the duties of the committee:

a. To advise with the State Tax Commissioner or his representatives as to the methods, findings and results of equalization studies; the preparation of assessment manuals, tax maps and measures for the valuation of special or unusual types of property; the conduct of pilot revaluations and complete revaluations as they may develop throughout the State; and such other matters as may be relevant to the development of this program.

b. To establish and maintain communications with the various county advisory committees on equalization and revaluation established in Part II of this resolution; to conduct periodic reviews of revaluation programs in each county; and to prepare and distribute materials illustrative to progress toward uniform valuations.

c. To provide a continuous source of information for the press, study groups and forums pertaining to the need, methods and implications of revaluation programs; to arrange informative radio and television programs featuring cooperative panels of local assessors, state revaluation officers and members of the citizens advisory committees.

d. To report biennially—and at such other times as it may deem appropriate, to the Joint Committee on Government and Finance and to the Commission on Interstate Cooperation as to the activities, program and plans of the Committee, and particularly as to legislative proposals that would guide and strengthen the process of revaluation.

PART II

County Advisory Committees On Equalization And Revaluation

1. There shall be established in each county of the State a bi-partisan County Advisory Committee on the Equalization and Revaluation of General Property.

2. Such county committee shall consist of two persons from each magisterial district, one from each of the major political parties to be appointed by the County Courts of the respective counties.

In the event that the County Court fails to appoint such Com-

mittee within ninety (90) days after this resolution becomes effective, the State Tax Commissioner shall appoint the committee in accordance with the requirements as set forth in this paragraph.

3. The County Court shall appoint one member of the County Committee as chairman, and the committee shall elect a vice-chairman and such other officers as it may deem appropriate.

4. The term of each member shall be four years, and vacancies shall be filled by the County Court.

5. The County Committee shall meet at the county seat or elsewhere in the county as it may determine. It shall convene at least quarterly throughout the year, and at such other times as its duties may require.

6. The members of the Committee shall serve without compensation, but all legitimate expenses for travel and maintenance in connection with their duties shall be paid by the County Court.

7. It shall be the duty of the county committees:

a. To consult with the local assessors as to methods and plans for the revaluation of general property within their respective counties;

b. To inform the citizens of their respective counties of progress toward revaluation through forums, conferences, hearings, group meetings and the local press;

c. To establish and maintain communications with the State Advisory Committee established in Part I of this resolution; and to participate in forums, conferences, hearings, and group meetings of the State Advisory Committee in such manner and on such occasions as circumstances may warrant and permit;

d. To report biennially and at such other times as it may deem appropriate, to the State Advisory Committee as to the activities, progress and plans of the County Committee; and particularly as to legislative proposals that, in the judgment of the Committee, would strengthen and guide the local programs of revaluation.

PART III

THE STATE TAX COMMISSIONER

1. The State Tax Commissioner shall expand and develop the Division of Property Evaluation in his office to the extent necessary to give effect to this resolution, and within the limits of the appropriation authorized for this purpose.

2. It shall be the duty of the State Tax Commissioner through the Division of Property Evaluation, and such other resources of his department he may elect to use,

a. To continue the preparation and improvement of assessment manuals and guides to be used in the revaluation program;

b. To advise local assessors in the performance of their regular duties; and at the request of any county court, to assist in developing revaluation programs for their respective counties;

c. To continue equalization studies on a state-wide basis; and to conduct sample revaluation projects in selected areas of the State;

d. To develop methods for the valuation of special and unusual classes of property, and instruct local assessors in their application.

3. It shall be the duty of the State Tax Commissioner to cooperate to the fullest extent possible with the State Advisory Committee on Equalization and Revaluation; as follows:

a. To provide such office space and conference facilities as may be necessary to the work of the committee;

b. To provide such technical and clerical assistance as may be necessary to the functions of the committee;

c. To inform the committee as to the activities of his department in the field of equalization and revaluation, and to advise with it as to methods, program and emphasis;

d. To arrange such conferences, hearings and public appearances as the Committee may suggest; and to provide such assistance in the preparation of press releases, informational materials and reports as the facilities of his office will permit.

4. It shall further be the duty of the State Tax Commissioner, upon the written request of any county court in the State, to cooperate with the local assessor in undertaking a revaluation of the general property within the county, so far as his resources and facilities will permit. To this end he shall provide competent revaluation teams to cooperate with the local assessors; and lend the full facilities of his office to all details of the work.

5. The State Tax Commissioner is further authorized, from such sums as may be appropriated for the purpose, to assist any county to meet the costs of a revaluation program. In estimating the State's share of such assistance, he shall consider as part of the state's contribution, the personnel, facilities and overhead allocated from his office; but the total contribution in both money and assistance shall not exceed one-half of the total cost of the revaluation project.

HOUSE CONCURRENT RESOLUTION NO. 14

(By Mr. Dahill)

[Adopted February 12, 1957.]

Requesting Congress through the Army Engineers and/or other appropriate agencies to take action on flood control in the Valley of the Guyan and of the Guyandotte River in West Virginia.

WHEREAS, The Valley of the Guyan of the Guyandotte River in Logan County has recently been inundated by what is becoming an annual flood, which flood might have been averted to a marked degree by a proper system of flood control; and

WHEREAS, The recent flood has caused much personal suffering and some loss of life in addition to damages to the extent of well over a million dollars; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Congress of the United States is hereby requested to take such action as will provide proper flood control to stop the annual flooding in the Valley of the Guyan and of the Guyandotte River; and, be it

Further Resolved, That the Secretary of State is hereby directed to forward attested copies of this resolution to the President and Secretary of the United States Senate, the Speaker and Clerk of the House of Representatives, and to each member of the West Virginia delegation in the Congress of the United States.

HOUSE CONCURRENT RESOLUTION NO. 20

(By Mr. Chilton and Miss Hallanan)

[Adopted March 8, 1957.]

Providing for the investigation of problems relating to providing proper aid to blind persons.

WHEREAS, A great number of the blind persons of this State have been experiencing difficulty in obtaining a livelihood; and

WHEREAS, It is generally recognized that the needs of blind persons are different from the needs of other classes of recipients of public assistance; and

WHEREAS, It is to be desired that these blind persons be relieved of the distress of poverty and encouraged and assisted in their efforts to render themselves more self-supporting; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Joint Committee on Government and Finance and the Commission on Interstate Cooperation be requested to conduct an exhaustive study of the entire area of aid to the blind in this State and that such committee make a full report of their investigation and recommendations for legislative or other action to the Legislature on or before January first, one thousand nine hundred fifty-nine.

That the committee is authorized to employ such assistance as it may deem advisable and to fix reasonable compensation and expenses of such persons and firms as may be employed within the amount made available by the appropriation of this committee.

HOUSE CONCURRENT RESOLUTION NO. 24

(By Mr. Speaker, Mr. Flannery)

[Adopted March 1, 1957.]

Continuing the West Virginia Commission on Education.

Resolved by the House of Delegates, the Senate concurring therein:

That the West Virginia Commission on Education, originally established with the adoption of Senate Concurrent Resolution No. 3 on May 13, 1955, and continued by the adoption of House Concurrent Resolution No. 13 on February 9, 1956, is again hereby extended with all power and authority granted by the two foregoing enactments of the Legislature of West Virginia.

The commission shall report recommendations and findings from time to time and shall make a complete report to the next budget session of the Legislature in the year one thousand nine hundred fifty-eight.

The expenses of the commission shall be paid from the appropriations for legislative committees and from the appropriations for the Joint Committee on Government and Finance made by this session of the Legislature.

HOUSE CONCURRENT RESOLUTION NO. 28

(By Mr. Clark)

[Adopted March 8, 1957.]

Concerning the study and investigation of all phases of the needs of and services to exceptional children in West Virginia.

WHEREAS, Exceptional children are entitled to opportunities to become self-sufficient, self-respecting members of their communities; and

WHEREAS, Special services of some sort and to some extent are needed by at least sixty thousand children (approximately thirteen per cent of our school age population), of whom approximately one thousand five hundred are now receiving special education services; and

WHEREAS, The present services being provided for exceptional children in West Virginia—medical, social, educational—are inadequate, insufficient, and generally substandard; and

WHEREAS, The State of West Virginia has a moral obligation to promptly and thoroughly investigate and determine the needs of this group of its children and young people and to then provide adequately to meet these needs; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Joint Committee on Government and Finance and the Joint Commission on Interstate Cooperation are hereby instructed to make a thorough study and investigation into all phases of the needs of and services to exceptional children in West Virginia, and to make findings and recommendations to the Legislature. The committee is hereby directed to consult and confer with such persons and agencies, public and private, as have information and data pertinent to this study and investigation.

The committee shall make such reports to the members of the Legislature from time to time as it shall deem advisable and shall, on or before January one, one thousand nine hundred fifty-nine, make an interim report by mail to the members of the Legislature embracing its findings and recommendations; and not later than the second week after convening of the regular session of the Legislature in the year one thousand nine hundred fifty-nine, the committee shall make a final report to the Legislature, and shall include in such report such findings and recommendations as it shall deem pertinent.

In order to make possible the procurement of the necessary information to carry out the intent and spirit of this resolution, the committee is hereby empowered to call upon any department or agency of state government for such services, information, and assistance as it may deem appropriate, and to cause the production of such papers, documents, records, and the like as the committee may deem expedient.

The committee is authorized to employ such consultative, investigative, and advisory assistance and other personnel as it may deem advisable and also to employ such clerical and

stenographic personnel as may be necessary in the proper performance of its duties, and to fix reasonable compensation and expenses of such persons as may be employed within the amount made available by the appropriation of this committee.

HOUSE RESOLUTION NO. 17

(By Mr. Vennari and Mr. Terry)

[Adopted March 7, 1957.]

Memorializing the Congress of the United States to extend Public Law No. 550, 82nd Congress, relating to education and training benefits, to service men and women as long as the draft continues.

WHEREAS, The Congress of the United States, expressing the will of citizenry by the enactment of the Servicemen's Readjustment Act of 1944 (Public Law 346, 78th Congress) and the Veterans' Readjustment Act of 1952 (Public Law 550, 82nd Congress), recognized the justice, equity and general value of a sound educational and training program for the veterans of our country; and

WHEREAS, The legislation enacted to provide such education and training benefits was for the purpose of restoring lost educational opportunities to those men and women who served in the armed forces of our country and has accomplished this purpose and has been an immeasurable factor in contributing to the economic security of our veterans and their families as well as to the security of the nation as a result of the increase in our general educational level and professional and technical skills of the veterans; and

WHEREAS, The increased earning power of veterans directly attributable to the program is resulting in payment of increased income taxes which will more than repay the total cost of the program; and

WHEREAS, Notwithstanding the continuing involuntary military service program, Public Law 7, 84th Congress, denies entitlement to educational and training benefits to all veterans who first entered service after January 31, 1955, which is grossly inequitable; therefore, be it

Resolved by the House of Delegates of the West Virginia Legislature:

That the Congress of the United States extend education and training benefits similar to the benefits provided by Public Law 550, 82nd Congress, as amended, to all veterans of our country who served during any period in which involuntary military service is authorized, and urges the Congress of the United States to enact legislation to accomplish this objective; and, be it

Further Resolved, That the Clerk of the House of Delegates send attested copies of this resolution to the President of the United States Senate, the Speaker of the House of Representatives, and to each member of the West Virginia delegation in the Congress of the United States.

HOUSE RESOLUTION NO. 19

(By Mr. Baker and Mr. Tompos)

[Adopted March 7, 1957.]

Relating to coal mining on the property of West Virginia Industrial School for boys.

WHEREAS, Officials of West Virginia Industrial School for Boys have complained to members of the Committee on Penal and Correctional Institutions of the House of Delegates, that certain persons, firms or corporations are engaged in mining and removing coal from lands of the State of West Virginia and adjacent to the West Virginia Industrial School for Boys in Taylor County; and

WHEREAS, Said officials of the West Virginia Industrial School for Boys have alleged that such mining operations have been and are now being conducted wholly without authority from any agency of the State of West Virginia; and

WHEREAS, The persons, firms or corporations thus engaged in mining and removing coal have continued their operations despite protests from officials of the West Virginia Industrial School for Boys; and

WHEREAS, The persons, firms or corporations have removed by force a gate put on said property by order of State Board of Control; and

WHEREAS, An obligation rests upon the Legislature thoroughly and promptly to investigate and determine the truth of the charges thus made; therefore, be it

Resolved by the House of Delegates:

That the House Finance Committee hereby requesting information as to the right of the persons, firms or corporations mentioned above to continue said mining operations, and the West Virginia House of Delegates does request the Attorney General of the State of West Virginia by and with the authority vested in him to forthwith take the necessary action to protect the property of the State of West Virginia, by determining:

1. The title to the property where said mining operations are now being carried on, and
2. To take such necessary action to resolve said mining question in the best interest of the State of West Virginia.

The Attorney General shall make a report of his findings and action taken on said findings on or before January 1, 1958, to the Governor and the House of Delegates.

In the event the necessary action has not been completed by said date any supplementary report shall be made to the designated parties.

SENATE CONCURRENT RESOLUTION NO. 3

(By Mr. Martin)

[Adopted February 26, 1957.]

Providing for the establishment of the true and correct boundary line between Alleghaney (Alleghany) County, Virginia, and Monroe County, West Virginia.

WHEREAS, Available maps of the area of Alleghaney (Alleghany) County, in the Commonwealth of Virginia, and of Monroe county, in the State of West Virginia, show the common boundary line between the two counties to be farther west than provided by chapter twenty-eight, acts of the General Assembly of Virginia, enacted on the fifth day of January, one thousand eight hundred twenty-two, creating said Alleghaney (Alleghany) County; and

WHEREAS, Uncertainty exists among local officials and citizens as to the true and correct location of said boundary line; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That a commission of three competent persons be appointed by the Governor of the State of West Virginia to meet and treat with a like commission of the Commonwealth of Virginia to establish the true and correct location of the boundary line between Alleghaney (Alleghany) County, in the Commonwealth of Virginia, and Monroe County of the State of West Virginia. The commission is hereby authorized and empowered to make such surveys and findings as may be necessary to the location and establishment of such true and correct boundary line.

When such boundary line is so located and established, the commission shall report its findings and determinations to the geological survey of the United States Department of Interior, Washington, D. C., and to the State Road Commission, to the Conservation Commission of West Virginia and to the State Geological and Economic Survey Commission and shall likewise report its findings and determinations to the fifty-fourth Legislature of West Virginia when convened in January, one thousand nine hundred fifty-nine, for such action thereon as the Legislature may deem necessary and appropriate.

The actual expenses of the West Virginia commission shall be paid out of funds appropriated by the Legislature for such purpose.

SENATE CONCURRENT RESOLUTION NO. 4

(By Mr. Brubeck)

[Adopted February 28, 1957.]

Creating a commission to study problems of the aging.

WHEREAS, The number of persons sixty-five years of age and over in the State (amounting to fourteen per cent of the population in some localities) has grown enormously—from one hundred thousand in one thousand nine hundred twenty to two

hundred thousand in one thousand nine hundred fifty-five—an increase of one hundred per cent as compared with five and four-tenths per cent for the total population; and

WHEREAS, It is estimated there will be three hundred thousand persons sixty-five and over by one thousand nine hundred sixty of whom more than a third will live in urban areas, about one-third in small towns, and less than one-third in rural areas; and

WHEREAS, Our older citizens possess great potentials of social and economic value to themselves, their communities and the State; and are entitled, in their advancing years, to healthful living and to opportunities for continuing beneficial, useful, and satisfying activity; and

WHEREAS, Numerous organizations, agencies and institutions—public and private—interested in the well-being of our older men and women have urgent need for the best possible information to guide them in adapting a variety of programs and services that work to prevent dependency and to ameliorate hardship for an ever enlarging number of older citizens; and

WHEREAS, There is need to focus public attention on the problems of our aging population and to stimulate and coordinate effective work in this field; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That there is hereby created a commission on the aging. The commission shall consist of nine members, no more than five of whom shall belong to the same political party, one of whom shall be a doctor of medicine, one of whom shall be a lawyer, and each member thereof shall be appointed without partisan connection from persons with a demonstrated interest in problems of aging, appointed by the Governor from the State at large. The commission shall make an extensive examination of the problems and potentials of our aging population and report upon the present and future needs of our older citizens with respect to such matters as employment, retirement, economic maintenance, housing and living arrangements, health and rehabilitation, education, recreation, personal adjustment, research and other matters as in its judgment are pertinent to

the subject. The commission shall consider existing programs and services of the State that may be affected by an aging population; with a view to offering concrete suggestions for a long-range plan to coordinate and improve state-wide programs, as well as to encourage and assist the development of local programs.

All agencies of the State shall assist the commission in its study. The members of the commission shall receive no compensation for their services, but shall be paid their necessary expenses for such; and for such secretarial and other assistance as the commission may require, there is hereby appropriated the sum of one thousand dollars to be paid from the contingent fund of the Governor. The commission shall conclude its study and make its report to the Governor and Legislature not later than December thirty-one, one thousand nine hundred fifty-seven.

SENATE CONCURRENT RESOLUTION NO. 5

(By Mr. Bean, Mr. President)

[Adopted February 12, 1957.]

Establishing a commission on constitutional revision.

WHEREAS, The present West Virginia Constitution was adopted in one thousand eight hundred seventy-two under social, economic and political conditions differing greatly from those now existing; and

WHEREAS, Since its adoption our Constitution has undergone no substantial revision, and has been amended in relatively few particulars; and

WHEREAS, Many of the original provisions have through passage of time become obsolete; and

WHEREAS, It is generally recognized that a fundamental charter of government adopted by the people so long ago must of necessity be in need of modernization by substantial amendment or by extensive or complete revision if it is to serve adequately the demands of present-day society for the most effective and responsible administration of governmental affairs; and

WHEREAS, It will require detailed and thorough study to determine the extent of the changes that are needed to adapt our Constitution to modern conditions, and to determine the most practicable method of bringing about such of these changes as may be capable of achievement at the present time; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That there be established a West Virginia commission on constitutional revision with the authority and responsibility (1) to make or have made under its supervision and direction a thorough study of all major phases of the constitutional system of the State and from time to time to issue and publish reports thereon to the Governor and the Legislature for the information of the citizens of the State; (2) to determine the most practicable method of bringing about needed constitutional reforms, whether by means of a constitutional convention or by action of the commission itself, and whether by revision of the entire Constitution or of only particular articles or sections thereof; and (3) to recommend to the Legislature the submission to the people of such constitutional amendments or revisions as may be deemed advisable and practicable.

That the commission be composed of three ex officio members, the Governor, the President of the Senate, and the Speaker of the House, and forty-five appointive members. Each of the ex officio members shall appoint fifteen members, including representatives of business, agriculture, labor, industry, civic organizations, and other professional and cultural groups within the State. Among the members appointed by the President of the Senate shall be five senators, not more than three of whom shall be members of the same political party; and among those appointed by the Speaker of the House shall be five delegates, not more than three of whom shall be members of the same political party. Vacancies shall be filled in the same manner as the original appointment was made.

That the members of the commission shall serve without compensation, but shall be reimbursed for all travel and other

expenses necessarily incurred by them in the performance of their duties.

That the commission be authorized to employ a director, who shall serve as the executive officer of the commission, and who with the approval of the commissioner shall have the authority to employ such research and other assistants as may be needed by the commission in the exercise of the authority and in the performance of the duties imposed upon it by this resolution.

That the commission be authorized to hold such meetings and hearings at such times and places, and take such testimony, as may be necessary to accomplish the purposes of this resolution.

That the commission be authorized to secure directly from any agency, officer or employee of the State, or of any political subdivision thereof, all information and data necessary to achieve the purposes of this resolution. Each such agency, officer, or employee is authorized and directed to furnish such information and data upon request made by the commission or its authorized representative.

That the expenses of the commission be paid in as nearly equal amounts as practicable from any moneys made available therefor in the contingent funds of the Senate and the House of Delegates.

That, unless sooner dissolved by concurrent resolution, the commission be continued until the completion of its studies, reports and recommendations.

SENATE CONCURRENT RESOLUTION NO. 6

(By Mr. Bean, Mr. President)

[Adopted February 22, 1957.]

Providing for post audit findings by the Legislative Auditor concerning revenues and expenditures of spending units of the state government.

WHEREAS, Large sums of money are annually appropriated by the Legislature of West Virginia for spending units of the state government, many of which spending units request increased appropriations at each successive session of the Legislature; and

WHEREAS, The Legislature, in the discharge of its duties and responsibilities to the State and the citizens and taxpayers thereof, senses the necessity and propriety of post audit findings from time to time as to revenues and expenditures of state government spending units; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That, upon the request and at the direction of the Joint Committee on Government and Finance of the Senate and House of Delegates, the Legislative Auditor shall make post audit findings on and concerning the revenues and expenditures of such state government spending units as may be designated by the joint committee. Such post audit findings shall be made at such times, for such periods of time, and in such manner, form and detail as may be prescribed by the Joint Committee, and upon completion of such audits the findings shall be made a matter of public record and copies of such findings shall be filed with the office of the Secretary of State.

The expenses of the Legislative Auditor incurred in making such post audit findings shall be paid out of the funds of the Joint Committee or out of such other appropriations as may be made by the Legislature therefor.

SENATE CONCURRENT RESOLUTION NO. 9

(By Mr. Taylor and Mr. Mitchell)

[Adopted February 7, 1957.]

Memorializing Congress to take action on flood control embracing the Valley of the Tug Fork of the Big Sandy River in West Virginia.

WHEREAS, The Valley of the Tug Fork of the Big Sandy River in the State of West Virginia has recently been visited by a flood disaster, which might have been averted to a marked degree by a proper system of flood control; and

WHEREAS, The recent flood has caused damage to the extent of at least ten million dollars in the Valley of the Tug Fork of the Big Sandy River; and

WHEREAS, Other floods have occurred at great frequency during the past few years in said valley, resulting in damages to the extent of many millions of dollars; and

WHEREAS, The distressing conditions due to floods tell a more powerful story than any that might be calculated in terms of the cost of a proper flood control system; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Congress of the United States is hereby requested to take such action as will provide a suitable and proper system of flood control in order to avert another such disaster in the Valley of the Tug Fork of the Big Sandy River; and, be it

Resolved further, That the Secretary of State is hereby directed to forward attested copies of this resolution to the President and Secretary of the United States Senate, the Speaker and Clerk of the House of Representatives, and to each member of the West Virginia delegation in the Congress of the United States.

SENATE CONCURRENT RESOLUTION NO. 10

(Originating in the Senate Committee on Finance)

[Adopted February 18, 1957.]

Requesting and directing the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to make a study of our mental and penal institutions.

WHEREAS, It is a recognized fact, based on highly reliable projected trends, that inmate population in our mental and penal institutions is now increasing and, with great probability, will continue to steadily increase; and

WHEREAS, The commodity and service costs according to present and past trends, are rising and will, in all probability, continue to rise; and

WHEREAS, Plant facility, personal service, administrative and operational standards and techniques are continually being raised to meet the demands of an advanced society; and

WHEREAS, This Legislature recognizes the urgent need for a thorough study and analysis of the present needs, particularly in relation to state expenditures; and

WHEREAS, It is also recognized by this Legislature that it is impractical, both as to time and thoroughness, for the members of the fifty-third Legislature to conduct this study while in session these sixty days; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance and the Commission on Interstate Cooperation be hereby requested and directed to make a thorough study of our mental and penal institutions for the purpose of gathering information which will reflect the following:

(a) The present needs and costs as compared to the national average and trend.

(b) Whether or not these needs are being met now; and if not,

(c) The way in which the probable future needs may be met and the cost of same;

(d) The possibility of reducing these determined costs by combining the responsibility, authority and activities of the state agencies now exercising control over the institutions; and, be it

Resolved Further, That the results of this study be summarized in a manual which will in particular reflect the needs and costs relative to a five-year program and a ten-year program and in addition will reflect the needs and costs for each year of the five-year program, beginning with the fiscal year one thousand nine hundred fifty-eight—fifty-nine, and that these established needs and costs be itemized under such general budgetary terms as personal services, current expenses, repairs and alterations, equipment and capital expenditures, and that these costs be correlated with program and performance objectives, said study to be completed by November first, one thousand nine hundred fifty-seven, and the report of the findings and recommendations be submitted to the Legislature, the public in general, and the Governor, with the request that such report and recommendations become an order of business

on the agenda of the Legislature at its next regular session, one thousand nine hundred fifty-eight; and, be it

Resolved Further, That the expenses necessary to conduct this study and to make the necessary report be paid from legislative appropriations made to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 11

(Originating in the Senate Committee on Finance)

[Adopted February 19, 1957.]

Requesting and directing the Joint Committee on Government and Finance and the Commission on Interstate Cooperation to make a study of our institutions of higher education.

WHEREAS, It is a recognized fact, based on highly reliable projected trends, that student population is now increasing and, with great probability, will continue to steadily increase; and

WHEREAS, The commodity and service costs according to present and past trends, are rising and will, in all probability, continue to rise; and

WHEREAS, Educational, plant facility, personal service, administrative and operational standards and techniques are continually being raised to meet the demands of an advanced society; and

WHEREAS, This Legislature recognizes the urgent need for a thorough study and analysis of the present and future needs, particularly in relation to state expenditures and the training of students and adults in the many new areas of industrial employment now developing in West Virginia; and

WHEREAS, It is also recognized by this Legislature that it is impractical, both as to time and thoroughness, for the members of the fifty-third Legislature to conduct this study while in session these sixty days; and

WHEREAS, This Legislature is cognizant of the preliminary planning and action taken by the joint advisory and coordinating committee of the Board of Governors of West Virginia University and the West Virginia Board of Education, with respect to higher education in West Virginia; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Joint Committee on Government and Finance and the Commission on Interstate Cooperation be hereby requested and directed to make a thorough study of our institutions of higher education for the purpose of gathering information which will reflect the following:

(a) The present needs and cost as compared to the national average and trend.

(b) Whether or not these needs are being met now; and if not,

(c) The way in which the probable future needs may be met and the cost of same.

(d) The possibility of reducing these determined costs by combining the responsibility, authority and activities of the state agencies now exercising control over the institutions; and, be it

Resolved Further, That the results of this study be summarized in a manual which will, in particular, reflect the needs and costs relative to a five-year program and a ten-year program and in addition will reflect the needs and costs for each year of the five-year program, beginning with the fiscal year one thousand nine hundred fifty-eight—fifty-nine, and that these established needs and costs be itemized under such general budgetary terms as personal services, current expenses, repairs and alterations, equipment and capital expenditures, and that these costs be correlated with program and performance objectives, said study to be completed by November first, one thousand nine hundred fifty-seven, and the report of the findings and recommendations be submitted to the Legislature, the public in general, and the Governor, with the request that such report and recommendations become an order of business on the agenda of the Legislature at its next regular session, one thousand nine hundred fifty-eight; and, be it

Resolved Further, That the joint advisory and coordinating committee of the Board of Governors of West Virginia University and the West Virginia Board of Education, consisting of three members from each board, be designated as an advisory

group to the Joint Committee on Government and Finance and the Commission on Interstate Cooperation; and, be it

Resolved Further, That the expenses necessary to conduct this study and to make the necessary report be paid from legislative appropriations made to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 14

(By Mr. Mitchell)

[Adopted February 21, 1957.]

Declaration of policy for institutional farms, state-owned lands and natural resources at institutions and elsewhere pertaining to state needs.

WHEREAS, The state farm program as now constituted is in no sense coordinated but consists of many unorganized individual units; and

WHEREAS, The Senate and House Committees have made many recommendations from time to time in an effort to set up the program as a single unit to avoid overlapping of production of milk, pork and beef, livestock, poultry, coal, timber, etc., with no success; and

WHEREAS, It is believed that it will be practical and good business and represent distinct economy to coordinate this farm program with that of the agricultural colleges and other agricultural agencies; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the recommendations hereto attached be approved and that the Board of Control and the Legislative Auditor, as well as the Interim Committee on Government and Finance be informed of the contents hereof.

Recommendations

It is recommended:

1. That all farms be model farms carrying out the recommendations of the agricultural colleges and other agricultural agencies, and that the farm agencies should cooperate with the agricultural college, carrying on as many of their experiments

as possible but remaining on a profitable basis to the State of West Virginia;

2. That standard report forms for every institutional farm and farm products should be adopted and reports made monthly to the State Board of Control and the Legislative Auditor;

3. That a legislative audit of all lands, including coal, oil, gas, timber and other natural resources owned by the State be made and reported at the end of the fiscal year. Copy of reports should be made to the State Board of Control;

4. That all state-owned land shall be used to the best advantage of the State of West Virginia such as: farming and related activities, mining, timbering and water conservation;

5. That a complete audit of prison industries should be made, and reports made monthly to the State Board of Control and Legislative Auditor;

6. That the farm budget be prepared by the State Board of Control for each farming operation as to needs and future uses;

7. That all institutional farms should operate as an individual unit out of the moneys appropriated into a revolving fund created by the State Legislature;

8. That transfer of agricultural commodities from one institution to another should carry a fifteen per cent discount under market price;

9. That current monthly prices should be established by the Department of Purchases;

10. That the State Penitentiary at Moundsville lease and operate Lakin State Hospital farm for joint benefit of both institutions;

11. That the Industrial School for Boys at Pruntytown furnish milk and other farm products for the Industrial School for Girls at Salem and for Fairmont Emergency Hospital;

12. That transfer of beef cattle be made from Huttonsville Medium Security Prison to Weston State Hospital. By such transfer a large financial saving to the State will be effected;

13. That transfer of dairy herd be made from Weston State Hospital to Medium Security Prison at Huttonsville, they in

turn to furnish milk and other farm produce to Weston State Hospital;

14. That enough milk be produced at Huntington State Hospital for the needs at Barboursville State Hospital;

15. That a balanced diet for every institution, using as much home-produced foods as possible, be prepared by a competent dietitian under direction of the State Board of Control. The dietitian should have at least five years of institutional dietetic training;

16. That a complete audit be kept on file in the Legislative Auditor's office of all spending agencies related to agricultural work;

17. That the Legislative Auditor be instructed to secure from available sources the following information:

(a) Amount of usable timber;

(b) Information regarding reforestation of land with seedlings suitable for state needs; such as, locust for guard-rail posts on highways;

(c) Amount of coal and gas reserves at different institutions;

(d) Survey of water supply;

(e) Secure complete inventory of all equipment owned by the different departments used by the institutions, Conservation Department, Department of Agriculture, and State Board of Control and related activities;

18. That study be made of all contracts for sale; lease and purchase of all lands, timber and natural resources pertaining to state needs;

19. That the business manager of different spending agencies should be responsible for the filing of necessary reports and control of all moneys appropriated for the operation of farms, institutional mines, and related activities;

20. That the agricultural auditor, under the supervision of the Legislative Auditor, should be a man of good character, graduate of an accredited agricultural college, and should have at least ten years of practical or farm management experience or combination of both, or equivalent.

SENATE CONCURRENT RESOLUTION NO. 15

(By Mr. Martin and Mr. Carrigan)

[Adopted February 22, 1957.]

Requesting the Joint Committee on Government and Finance to make a study of existing laws relating to the privilege tax on certain carrier corporations and to report thereon to the Legislature.

WHEREAS, Section three, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, has been declared unconstitutional by the Supreme Court of Appeals of West Virginia insofar as said section applies to interstate commerce; and

WHEREAS, Some of the language of sections five, six, eight and eleven of said article is ambiguous and impractical and creates problems incident to the administration and enforcement thereof; and

WHEREAS, Section five of said article may be unconstitutional insofar as it applies to carriers engaged exclusively in interstate commerce; and

WHEREAS, Conditions relating to the taxpayers affected by said article have changed materially since the initial enactment thereof into law; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That a comprehensive study of article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be made by the Joint Committee on Government and Finance; and that said committee present recommendations for the revision of said article at the regular session of the Legislature to be convened in January, one thousand nine hundred fifty-nine.

SENATE CONCURRENT RESOLUTION NO. 16

(By Mr. McCoy)

[Adopted February 27, 1957.]

Declaring the intent of the Legislature that the Commissioner of Weights and Measures shall have authority under ex-

isting laws to inspect and calibrate milk containers without requiring reimbursement therefor.

WHEREAS, The Commissioner of Weights and Measures interprets existing laws as requiring him to inspect and calibrate milk tanks and containers wherein farmers and other producers of milk in this State store milk for sale and delivery to quantity purchasers thereof and to be reimbursed for expenses incurred in such services; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Legislature declares and intends that the general and inclusive powers and authority vested in the sealer of weights and measures, under and pursuant to article one, chapter forty-seven of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, includes the duty and power to inspect and calibrate milk tanks and containers wherein farmers and other producers of milk in this State store milk for sale and delivery to quantity purchasers thereof without requiring reimbursement for expenses incurred by him for such inspection and calibration services.

SENATE CONCURRENT RESOLUTION NO. 17

(By Mr. Hedrick)

[Adopted February 25, 1957.]

Memorializing the Congress of the United States to give favorable consideration to the problem of job opportunities for people in higher age groups up to the age of retirement.

WHEREAS, Because of our modern complex, competitive society, business and industry has found it economically desirable to employ people in lower age groups; and

WHEREAS, Business and industry seldom employ persons in the higher age groups except in technical, specialized, high-skilled trades and executive capacity; and

WHEREAS, People in the higher age groups now find a dearth of job opportunity and such unemployment has become a national problem; therefore be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Congress of the United States is hereby requested to give consideration to this national problem of limited job opportunities for persons in the higher age groups; and, be it

Resolved further, That the Secretary of State is hereby directed to forward attested copies of this concurrent resolution to the President of the United States Senate, the Speaker of the House of Representatives, and to each member of the West Virginia delegation in the Congress of the United States.

SENATE CONCURRENT RESOLUTION NO. 19

(By Mr. Mitchell and Mr. Taylor)

[Adopted February 26, 1957.]

Proclaiming the existence of emergencies in certain areas in the State of West Virginia caused by recent floods of major proportion.

WHEREAS, In view of the occurrence of a disaster of unprecedented size and destructiveness resulting from floods in certain areas in the State of West Virginia, and in order to insure that preparations of this State will be adequate to deal with such disaster in preventing, minimizing and repairing injury and damage resulting therefrom, and generally to protect the public peace, health and safety and preserve the lives of the people of this State and restore them to normal living; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That there is hereby proclaimed emergencies in certain areas as a result of the recent floods of major proportion in the State of West Virginia, and that the safety and welfare of the inhabitants of this State require an invocation of the provisions of sections six, twelve and thirteen, article five, chapter fifteen of the Code of West Virginia, providing for civil defense functions in emergencies in order to prevent, minimize and repair injury and damage resulting from such flood disaster.

SENATE CONCURRENT RESOLUTION NO. 21

(By Mr. Bean, Mr. President)

[Adopted March 8, 1957.]

Requesting and urging the Bureau of Public Roads of the United States Department of Commerce to include a northward extension of the West Virginia Turnpike in the national system of interstate highways.

WHEREAS, The geographical position of the State of West Virginia in the east-central portion of the United States creates within the area of this State an essential and strategic location for a north-south highway for interstate transportation and travel; and

WHEREAS, The State of West Virginia, by and through its Turnpike Commission, has in recent years constructed and now has in use eighty-six miles of turnpike over a difficult terrain from the southern part of the State northward to a point on the Great Kanawha River near the City of Charleston, the capital of the State, thereby providing and affording an excellent grade and course for transportation and travel; and

WHEREAS, The inclusion of a northward extension of said turnpike in the national system of interstate highways, as contemplated by the Congress of the United States in the federal-aid highway program, will provide an essential inland artery of transportation and commerce of vital importance in the national interest; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Legislature of West Virginia requests and urges the Bureau of Public Roads of the United States Department of Commerce to include the northward extension of the West Virginia Turnpike in the national system of interstate highways, in accordance with the federal-aid highway program provided and established by the Congress of the United States, thereby promoting the national interest and providing essential north-south transportation and travel facilities by using the West Virginia Turnpike already constructed on an excellent course and grade over a difficult terrain.

The State Road Commissioner of West Virginia and other officials of the State are hereby requested to cooperate in every proper manner in having such turnpike extension included in the national system of interstate highways and to take all steps necessary to expedite and accomplish construction of such extension.

SENATE CONCURRENT RESOLUTION NO. 22

(By Mr. Martin)

[Adopted March 8, 1957.]

Expressing the gratitude of the citizens of West Virginia for publication of the article "History Awakens at Harpers Ferry" by the National Geographic Society.

WHEREAS, The citizens of West Virginia have long been proud of the many areas of scenic and historic interest, which annually attract tens of thousands of tourists to the State; and

WHEREAS, The National Congress has in recent years designated one of these areas of interest, Harpers Ferry, as a national monument, and

WHEREAS, The National Geographic Society has called worldwide attention to the State of West Virginia and the Harpers Ferry national monument in a leading article written by Mr. Volkmar Wentzel and published in the March, one thousand nine hundred fifty-seven, issue of the National Geographic magazine; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Legislature of West Virginia, on behalf of the citizens of the State, hereby extends to the National Geographic Society an expression of gratitude for publication of the article "History Awakens at Harpers Ferry"; and be it

Resolved further, That an official copy of this resolution be mailed by the Clerk of the Senate to Mr. Volkmar Wentzel and to the National Geographic Society.

SENATE JOINT RESOLUTION NO. 1

(By Mr. Taylor and Mr. Bowers)

[Adopted February 27, 1957.]

Proposing an amendment to the Constitution of the State of West Virginia, amending sections one, two and seventeen, article seven, section two, article twelve, all relating to the State Superintendent of Free Schools.

Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred fifty-eight, which proposed amendment is as follows:

That sections one, two and seventeen, article seven, and section two, article twelve of the Constitution of this State be amended to read as follows:

Article VII.

Section 1. *Executive Department.*—The executive department shall consist of a Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture and Attorney General, who shall be, ex officio, reporter of the court of appeals. Their terms of office shall be four years, and shall commence on the first Monday after the second Wednesday of January next after their election. They shall reside at the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices, and shall perform such duties as may be prescribed by law.

Sec. 2. *Election.*—An election for Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture and Attorney General shall be held at such times and places as may be prescribed by law.

Sec. 17. *Vacancies in Other Executive Departments.*—If the office of Secretary of State, Auditor, Treasurer, Commissioner of Agriculture or Attorney General shall become vacant by

death, resignation, or otherwise, it shall be the duty of the Governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be prescribed by law. The subordinate officers of the executive department and the officers of all public institutions of the State shall keep an account of all moneys received or disbursed by them, respectively, from all sources, and for every service performed, and make a semi-annual report thereof to the Governor under oath or affirmation; and any officer who shall wilfully make a false report shall be deemed guilty of perjury.

Article XII.

Section 2. *Supervision of Free Schools.*—The general supervision of the free schools of the State shall be vested in the West Virginia Board of Education, which shall perform such duties as may be prescribed by law. The board shall consist of nine members to be appointed by the Governor, by and with the advice and consent of the Senate, for overlapping terms of nine years, except that the original appointments shall be for terms of one, two, three, four, five, six, seven, eight and nine years, respectively. No more than five members of the board shall belong to the same political party, and in addition to the general qualifications otherwise required by the Constitution, the Legislature may require other specific qualifications for membership on the board. No member of the board may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, or gross immorality, and then only in the manner prescribed by law for the removal by the Governor of state elective officers.

The West Virginia Board of Education shall, in the manner prescribed by law, select the State Superintendent of Free Schools who shall serve at its will and pleasure. He shall be the chief school officer of the State, and shall have powers and shall perform such duties as may be prescribed by law.

The State Superintendent of Free Schools shall be a member of the Board of Public Works as provided by subsection B, section fifty-one, article six of this Constitution.

SENATE JOINT RESOLUTION NO. 4

(By Mr. Carrigan and Mr. Martin)

[Adopted March 5, 1957.]

Proposing an amendment to the Constitution of the State of West Virginia, by adding a new section to article ten thereof, designated section one-a, relating to the exemption of money and bank deposits from taxation.

Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of West Virginia shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred fifty-eight, which proposed amendment is as follows:

That article ten of the Constitution be amended by adding thereto a new section, designated section one-a, to read as follows:

Section 1-a. *Bank Deposits and Money Exempt from Ad Valorem Property Taxes.*—Notwithstanding the provisions of the preceding section, bank deposits and money shall not be subject to ad valorem property taxation.

SENATE JOINT RESOLUTION NO. 5

(By Mr. Martin)

[Adopted February 25, 1957.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section four, article eleven thereof, relating to corporate stock and the rights of stockholders of corporations to vote for directors or managers.

Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of West Virginia shall be submitted to the voters of the State at the next general election to be

held in the year one thousand nine hundred fifty-eight, which proposed amendment is as follows:

That section four, article eleven of the Constitution be amended to read as follows:

Section 4. *Rights of Stockholders.*—The Legislature shall provide by law that every corporation, other than a banking institution, shall have power to issue one or more classes and series within classes of stock, with or without par value, with full, limited or no voting powers, and with preferences and special rights and qualifications, and that in all elections for directors or managers of incorporated companies, every stockholder holding stock having the right to vote for directors, shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

SENATE JOINT RESOLUTION NO. 8

(By Mr. Bean, Mr. President, and Mr. Carrigan)

[Adopted March 6, 1957.]

Proposing an amendment to the Constitution of the State of West Virginia, by adding a new section to article ten thereof, to be designated section ten, relating to tax levies on property.

Resolved by the Legislature of West Virginia, two-thirds of all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of West Virginia shall be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred fifty-eight, which proposed amendment is as follows:

That article ten of the Constitution be amended by adding thereto a new section, to be designated section ten, to read as follows:

Section 10. *Better Schools Amendment.*—Notwithstanding any other provision of the Constitution to the contrary, the maximum rates authorized and allocated by law for tax levies on the several classes of property for the support of public schools may be increased in any school district for a period not to exceed five years, and in an amount not to exceed one hundred per cent of such maximum rates, if such increase is approved, in the manner provided by law, by at least sixty per cent of the qualified voters of the school district.

Notwithstanding any other provision of the Constitution to the contrary, the maximum rates provided for tax levies by school districts on the several classes of property may be used entirely for current expense purposes; and all levies required for principal and interest payments on any bonded indebtedness, now or hereafter contracted, not to exceed five per centum on the value of the taxable property therein, the value to be ascertained in accordance with section eight of this article, shall be laid separate and apart and in addition to such maximum rates, but in the same proportions as such maximum rates are levied on the several classes of property.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1957

FIRST EXTRAORDINARY SESSION

(August 5, 1957—January 7, 1958)

CHAPTER 1

(House Bill No. 2—By Mr. Myles and Mr. Seibert)

AN ACT to amend and reenact sections one, eight and nine, chapter one hundred sixty-seven, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, authorizing the issuance and sale of bonds of the state of West Virginia to raise money for the purpose of paying a bonus to veterans under and by virtue of the "Korean Veterans Bonus Amendment" to the constitution adopted at the general election held in November, one thousand nine hundred fifty-six, providing for the disposition and expenditure of the proceeds of the sale thereof, and providing for the payment of such bonds and for the rights and security of the holders thereof.

[Passed August 5, 1957; in effect from passage. Approved by the Governor.]

Korean Veterans Bonus Bonds.

Section

1. Korean veterans bonus bonds; authority to issue.
8. Sale by governor; minimum price offer of bonds to state.
9. Proceeds paid into Korean veterans bonus fund; expenditure.

Be it enacted by the Legislature of West Virginia:

That sections one, eight and nine, chapter one hundred sixty-seven, acts of the Legislature, regular session, one thousand

nine hundred fifty-seven, be amended and reenacted to read as follows:

Section 1. *Korean Veterans Bonus Bonds; Authority to Issue.*—Bonds of the state of West Virginia are hereby authorized to be issued and sold for the purpose of raising funds for the payment of a cash bonus to veterans, including the costs of administration necessarily incident thereto, under and by virtue of the “Korean Veterans Bonus Amendment” to the constitution adopted at the general election held in November, one thousand nine hundred fifty-six. Such bonds may be issued by the governor in such amounts, in coupon or registered form, in such denominations, at such times and bearing such date or dates as the governor may determine, and shall become due and payable serially beginning one year and ending not more than twenty years from the date thereof. The amount of such bonds maturing in each year shall be so arranged by the governor that the aggregate amount of principal of and interest on such bonds maturing and becoming due in each year shall be approximately equal. A variation of not more than three per cent in such aggregate amounts of principal and interest maturing and becoming due in each year shall be considered a proper compliance with such requirement. All of such bonds maturing in the year one thousand nine hundred sixty or in any year thereafter may be redeemable prior to maturity, at the option of the state of West Virginia, on January one, one thousand nine hundred sixty, or any interest date thereafter, at such premium or premiums, and upon such other conditions as the governor shall determine and prescribe in the notice of sale thereof.

The principal amount of bonds so issued shall not exceed the maximum amount fixed in the Korean bonus bond amendment.

These bonds shall constitute a legal investment for the workmen’s compensation fund, the teachers’ retirement fund, the interest and sinking fund of the veterans bonus bonds of one thousand nine hundred fifty, or any other

37 fund subject to investment, or the investment of which is
38 not otherwise designated or restricted by law.

Sec. 8. *Sale by Governor; Minimum Price Offer of Bonds to State.*—The governor shall sell the bonds herein mentioned at such time or times as he may determine necessary to provide funds for the payment of the bonus as herein provided. All sales shall be at not less than par and accrued interest and an interest rate not to exceed three and nine-tenths per cent. All interest coupons becoming payable prior to the sale date shall be cancelled by the treasurer and rendered ineffective, before the delivery of the bonds so sold: *Provided, however,* That before offering said bonds to the public, the governor or the governing body authorized to sell the same shall offer these bonds in writing to the board of public works on behalf of any governmental agencies of the state or the sinking fund commission, the funds of which they are required to invest.

Sec. 9. *Proceeds Paid into Korean Veterans Bonus Fund; Expenditure.*—The proceeds of all sales of bonds herein authorized shall be paid into the Korean veterans bonus fund, which is hereby created, and shall be expended solely for the payment of the Korean veterans bonus and the costs of administration necessarily incident thereto.

8 If deemed advisable, the governor may direct the state
9 treasurer to invest a part of the moneys in the Korean
10 veterans bonus fund, in direct obligations of the United
11 States of America, having a maturity of not exceeding
12 one hundred eighty-five days from date of purchase. Any
13 interest or profit accruing from such purchases shall be
14 credited to the Korean veterans bonus fund.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1958

REGULAR SESSION

CHAPTER 1

(Com. Sub. for Senate Bill No. 1—Originating in the Senate
Committee on Finance)

AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution.

[Passed February 6, 1958; in effect from passage.]

Title

1. General Provisions.
2. Appropriations.
3. Administration.

Title 1. General Provisions.

Section

1. General policy.
2. Definitions.
3. Classification of appropriations.
4. Method of expenditures.

Be it enacted by the Legislature of West Virginia:

Section 1. *General Policy.*—The purpose of this act is to
2 appropriate money necessary for economical and efficient
3 discharge of the duties and responsibilities of the state and
4 its agencies during the fiscal year one thousand nine hun-
5 dred fifty-nine.

Sec. 2. *Definitions.*—For the purpose of this act:
2 “Board” shall mean the board of public works;

3 "Spending Unit" shall mean the department, agency, or
4 institution to which an appropriation is made;

5 The "fiscal year one thousand nine hundred fifty-nine"
6 shall mean the period from July first, one thousand nine
7 hundred fifty-eight through June thirtieth, one thousand
8 nine hundred fifty-nine.

9 "From collections" shall mean that part of the total ap-
10 propriation which must be collected by the spending unit
11 to be available for expenditure. If the authorized amount
12 of collections is not collected, the total appropriation for
13 the spending unit shall be reduced automatically by the
14 amount of the deficiency in the collection. If the amount
15 collected exceeds the amount designated "from collections"
16 the excess shall be set aside in a special surplus fund and
17 may be expended for the purpose of the spending unit as
18 provided by chapter thirty-nine, acts of the Legislature,
19 regular session, one thousand nine hundred thirty-nine.

Sec. 3. *Classification of Appropriations.*—An appropria-
2 tion for:

3 "Personal services" shall be expended only for the pay-
4 ment of salaries, wages, fees, and other compensation for
5 skill, work, or employment;

6 Unless otherwise specified, appropriations for personal
7 services shall include salaries of heads of spending unit.

8 "Current expenses" shall be expended only for operating
9 costs other than personal services or capital outlay;

10 "Repairs and alterations" shall include all expenditures
11 for materials, supplies and labor used in repairing and al-
12 tering buildings, grounds and equipment;

13 "Equipment" shall be expended only for things which
14 have an appreciable and calculable period of usefulness in
15 excess of one year;

16 "Buildings" shall include construction and alteration of
17 structures and the improvements of lands, sewer and water
18 improvements, and shall include shelter, support, storage,
19 protection, or the improvement of a natural condition;

20 "Lands" shall be expended only for the purchase of lands
21 or interest in lands.

22 Appropriations otherwise classified shall be expended
23 only where the distribution of expenditures for different
24 purposes cannot well be determined in advance or it is
25 necessary or desirable to permit the spending unit freedom
26 to spend an appropriation for more than one of the above
27 purposes.

Sec. 4. *Method of Expenditure.*—Money appropriated by
2 this act, unless otherwise specifically directed, shall be
3 appropriated and expended according to the provisions of
4 article three, chapter twelve of the code of West Virginia,
5 one thousand nine hundred thirty-one, as amended, or ac-
6 cording to any law detailing a procedure specifically limit-
7 ing that article.

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10. Appropriations from taxes and license fees.
11. Appropriations to pay costs of publication of delinquent corporations.
12. Appropriations for local governments.
13. Total appropriation.
14. General school fund.

Section 1. *Appropriations from General Revenue.*—From the state fund, general revenue, there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in chapter thirty-nine, acts of the Legislature, regular session, one thousand nine hundred thirty-nine, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred fifty-nine.

LEGISLATIVE

1—Senate

Acct. No. 101

	<i>Fiscal Year</i> 1958-1959
1 Salaries of Members	\$ 48,000.00
2 Compensation and per diem of officers and	
3 attaches	67,000.00
4 Mileage of Members	1,000.00
5 Current Expenses and Contingent Fund	75,000.00
6 To pay Clerk of the Senate for compiling	
7 and publishing the West Virginia Blue	
8 Book, the distribution of which shall be	
9 made by the Office of the Clerk of the	
10 Senate and shall include seventy-five	
11 copies for each member of the Legislature	
12 and two copies to each classified and ap-	
13 proved High and Junior High School and	
14 one to each Elementary School within the	
15 state	10,000.00
16 To pay the cost of printing the 1958 edition	
17 of Blue Book	46,000.00
18 To establish bill drafting service and ex-	
19 penses connected therewith	5,000.00
20 The appropriations for the Senate for the	
21 fiscal year 1957-58 are to remain in full	
22 force and effect, and are hereby reappro-	
23 priated to June 30, 1959.	
24 Upon the written request of the Clerk of the	
25 Senate the State Auditor shall transfer	

26 amounts between items of the total ap-
 27 propriation in order to protect or increase
 28 the efficiency of the service.

29 The Clerk of the Senate is authorized to
 30 draw his requisitions upon the Auditor,
 31 payable out of the contingent fund of the
 32 Senate, for any bills for supplies and
 33 services that may have been incurred by
 34 the Senate and not included in the appro-
 35 priation bill, and for bills for supplies and
 36 services incurred after adjournment, and
 37 for the necessary operation of the Senate
 38 offices, the requisition for same to be ac-
 39 companied by the bills to be filed with the
 40 Auditor.

2—House of Delegates

Acct. No. 102

1 Salaries of Members	\$	150,000.00
2 Compensation and per diem of officers and		
3 attaches		95,000.00
4 Mileage of Members		3,000.00
5 Current Expenses and Contingent Fund.....		82,000.00
6 Drafting Service		5,000.00

7 An amount, not to exceed \$3,600.00 per year,
 8 is hereby authorized to be expended from
 9 the contingent fund of the House of Dele-
 10 gates for janitor services, etc.

11 The appropriations for the House of Dele-
 12 gates for the fiscal year 1957-58 are to re-
 13 main in full force and effect, and are here-
 14 by reappropriated to June 30, 1959.

15 Upon the written request of the Clerk of the
 16 House of Delegates the State Auditor
 17 shall transfer amounts between items of
 18 the total appropriation in order to pro-
 19 tect or increase the efficiency of the
 20 service.

21 The Clerk of the House of Delegates, with
 22 approval of the Speaker, is authorized to
 23 draw his requisitions upon the Auditor,
 24 payable out of the contingent fund of the
 25 House of Delegates, for any bills for sup-
 26 plies and services that may have been in-
 27 curred by the House of Delegates, and not
 28 included in the appropriation bill, for bills
 29 for services and supplies incurred in prep-
 30 aration for the opening of the session and
 31 after adjournment, and for the necessary
 32 operation of the offices of the House of
 33 Delegates, the requisition for same to be
 34 accompanied by bills to be filed with the
 35 Auditor.

36 For duties imposed by law and by the House
 37 of Delegates, including the salary allowed
 38 by law as keeper of the rolls, the Clerk of
 39 the House of Delegates shall be paid a
 40 salary of \$775.00 per month, payable from
 41 the contingent fund of the House of Dele-
 42 gates, and the Clerk may employ a secre-
 43 tary at a salary not to exceed \$325.00 per
 44 month, payable monthly from the same
 45 fund.

3—*Joint Expenses*

Acct. No. 103

1 To pay the cost of legislative printing and	
2 stationery	\$ 100,000.00
3 Commission on Interstate Cooperation	13,000.00
4 Joint Committee on Government and	
5 Finance	225,000.00
6 Other Authorized Legislative Committees....	25,000.00

7 The appropriations for Joint Expenses for
 8 the fiscal year 1957-58 are to remain in full
 9 force and effect, and are hereby reappro-
 10 priated to June 30, 1959.

11 Upon the written request of the Clerk of
 12 the Senate and the Clerk of the House of

- 13 Delegates the State Auditor shall transfer
 14 amounts between items of the total appro-
 15 priation in order to protect or increase the
 16 efficiency of the service.

JUDICIAL

4—*Supreme Court of Appeals*

Acct. No. 110

1	Salaries of Judges	\$	87,500.00
2	Other Personal Services		101,000.00
3	Current Expenses		20,000.00
4	Equipment		2,000.00
5	Total	\$	210,500.00

5—*Circuit Courts*

Acct. No. 111

1	Salaries of Judges	\$	324,600.00
2	Current Expenses		90,000.00
3	Total	\$	414,600.00

6—*Judges' Retirement System*

Acct. No. 112

1	To be transferred to the Judges' Retirement		
2	Fund, in accordance with the law relating		
3	thereto, upon requisition of the State Aud-		
4	itor	\$	25,000.00

7—*State Law Library*

Acct. No. 114

1	Personal Services	\$	16,580.00
2	Current Expenses		1,000.00
3	Equipment		14,500.00
4	Total	\$	32,080.00

8—*Judicial Council*

Acct. No. 118

1	To pay expenses of Members of the Council \$	500.00
---	--	--------

9—*Auditor's Office—Criminal Charges*

Acct. No. 119

1	Criminal Charges.....	\$ 200,000.00
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EXECUTIVE

10—*Governor's Office*

Acct. No. 120

1	Salary of Governor	\$ 17,500.00
2	Other Personal Services	32,230.00
3	Current Expenses	9,500.00
4	Equipment	1,500.00
5	Civil Contingent Fund.....	100,000.00
6	Of this appropriation there may be expended	
7	an amount not to exceed \$5,000.00 to pro-	
8	vide instruction, care and maintenance for	
9	educable persons who have multiple handi-	
10	caps and for whom the state provides no	
11	facilities.	
12	Of this appropriation there may be expend-	
13	ed, at the discretion of the Governor, an	
14	amount not to exceed \$1,000.00 as West	
15	Virginia's contribution to the Interstate	
16	Oil Compact Commission.	
17	Custodial Fund	41,400.00
18	To be used for current general expenses,	
19	including compensation of servants and	
20	employees, household maintenance, cost of	
21	official functions, and any additional	
22	household expenses occasioned by such of-	
23	ficial functions.	
24	Total	\$ 202,130.00

11—*Board of Probation and Parole*

Acct. No. 123

1	Personal Services.....	\$	150,800.00
2	Current Expenses.....		45,700.00
3	Equipment		2,000.00
4	Total	\$	198,500.00

FISCAL

12—*Auditor's Office—General Administration*

Acct. No. 150

1	Salary of State Auditor	\$	11,000.00
2	Other Personal Services		151,700.00
3	Current Expenses		10,800.00
4	Equipment		5,000.00
5	Total	\$	178,500.00

13—*Treasurer's Office*

Acct. No. 160

1	Salary of State Treasurer	\$	11,000.00
2	Other Personal Services		81,900.00
3	Current Expenses		13,800.00
4	Equipment		7,000.00
5	Total	\$	113,700.00

14—*Sinking Fund Commission*

Acct. No. 170

1	Personal Services	\$	15,640.00
2	Current Expenses		750.00
3	Total.....	\$	16,390.00

15—*State Tax Commissioner*

Acct. No. 180

1	Personal Services	\$	638,760.00
2	Current Expenses		163,500.00

3	Equipment	\$	21,700.00
4	Property Evaluation		140,000.00
5	Total	\$	963,960.00

16—*State Tax Commissioner*

Acct. No. 185

1	For Property Appraisal, Tax Maps, etc., in		
2	accordance with the provisions of Senate		
3	Bill No. 34	\$	1,500,000.00

17—*State Commissioner of Public Institutions*

Acct. No. 190

1	Salary of Commissioner	\$	10,000.00
2	Other Personal Services		37,820.00
3	Current Expenses		7,825.00
4	Equipment		450.00
5	Total	\$	56,095.00

18—*Department of Finance and Administration*

Acct. No. 210

1	Personal Services	\$	422,000.00
2	Current Expenses		149,920.00
3	Repairs and Alterations		40,000.00
4	Equipment		8,200.00
5	Postage		50,000.00
6	Total	\$	670,120.00
7	The Workmen's Compensation Commission,		
8	Department of Public Assistance, Public		
9	Service Commission, Conservation Com-		
10	mission, Department of Motor Vehicles,		
11	State Road Commission and State Health		
12	Department shall reimburse the postage		
13	appropriation of the Department of Fi-		
14	nance and Administration monthly for all		

15 meter service. Any spending unit receiving
 16 reimbursement for postage costs from the
 17 Federal Government shall refund to the
 18 postage account of the Department of Fi-
 19 nance and Administration such amounts.
 20 Should this appropriation for postage be
 21 insufficient to meet the mailing require-
 22 ments of the state spending units as set
 23 out above, any excess postage meter serv-
 24 ice requirements shall be a proper charge
 25 against the units, and each spending unit
 26 shall refund to the postage appropriation
 27 of the Department of Finance and Admin-
 28 istration any amounts required for that
 29 department for postage in excess of this
 30 appropriation.

19—*The Board of Public Works*

Acct. No. 220

1	Contingent Fund	\$	25,000.00
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LEGAL

20—*Attorney General*

Acct. No. 240

1	Salary of Attorney General	\$	12,000.00
2	Other Personal Services		116,320.00
3	Current Expenses		18,000.00
4	Equipment		7,500.00
5	To protect the resources or tax structure of		
6	the State in controversies or legal proceed-		
7	ings affecting same		4,000.00
8	Total	\$	157,820.00

21—*Commission on Uniform State Laws*

Acct. No. 245

1	Total	\$	3,150.00
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22—*State Board of Insurance*

Acct. No. 248

1	Personal Services.....	\$	5,000.00
2	Current Expenses.....		2,200.00
3	Total	\$	7,200.00

INCORPORATING AND RECORDING

23—*Secretary of State*

Acct. No. 250

1	Salary of Secretary of State	\$	11,000.00
2	Other Personal Services		35,890.00
3	Current Expenses		7,000.00
4	Equipment		2,000.00
5	Total	\$	55,890.00

EDUCATIONAL

24—*Department of Education—State Aid to Schools*

Acct. No. 295

1	State aid to supplement the general school		
2	fund	\$	52,005,220.00
3	To be transferred to the general school fund		
4	upon the requisition of the Governor. To		
5	be distributed according to law except an		
6	amount not to exceed \$175,000.00, which		
7	sum shall be available to the Department		
8	of Education to aid counties in providing		
9	instruction for exceptional children. <i>Pro-</i>		
10	<i>vided, however,</i> That from the amount ap-		
11	propriated herein to the Department of		
12	Education to aid counties in providing in-		
13	struction for the exceptional children, an		
14	amount not to exceed \$14,000.00 may be		
15	used to pay the salary of a director and		
16	other administrative expenses for the ex-		
17	ceptional children's program.		

- 18 In making distribution of state aid to coun-
 19 ties as provided by law, the State Board of
 20 School Finance shall allocate to each coun-
 21 ty, state aid of not less than fifty dollars
 22 for each weighted pupil in the county.

25—*Department of Education—Textbook Aid*

Acct. No. 297

1	Textbooks for Schools	\$	150,000.00
2	To be distributed according to chapter fifty-		
3	one, acts of the Legislature, regular ses-		
4	sion, 1939.		

26—*Teachers' Retirement Board*

Acct. No. 298

1	Benefit Fund—Payments to Retired Teach-		
2	ers	\$	2,220,000.00
3	Employers' Accumulation Fund—To match		
4	contributions of members.....		3,000,000.00
5	Expense Fund.....		24,600.00
6	Total	\$	5,244,600.00

27—*West Virginia University*

Acct. No. 300

1	Personal Services.....	\$	5,235,639.00
2	Current Expenses		743,295.00
3	Repairs and Alterations		243,000.00
4	Equipment		255,500.00
5	Oak Wilt Control Research		10,000.00
6	State aid to students of Veterinary Medicine		28,000.00
7	Fire Insurance Premium (3 years).....		60,000.00
8	Pharmacy School—Moving and Equipment		34,000.00
9	State aid to Medical Students.....		62,500.00
10	Total	\$	6,671,934.00
11	Out of the above appropriation for Personal		
12	Services the sum of \$7,500.00 shall be used		

- 13 only for the employment of a Spray Spec-
 14 ialist who shall be stationed only at West
 15 Virginia University Farm at Kearneys-
 16 ville, and the sum of \$6,000.00 shall be
 17 used only for the employment of an in-
 18 structor at the School of Pharmacy at the
 19 West Virginia University Medical School.

28—*West Virginia University—Medical School*

Acct. No. 310

- 1 To supplement Funds for Construction of
 2 Medical School Hospital\$ 1,400,000.00

29—*Potomac State College of West Virginia University*

Acct. No. 315

- | | |
|---------------------------------|---------------|
| 1 Personal Services..... | \$ 280,045.00 |
| 2 Current Expenses..... | 40,600.00 |
| 3 Repairs and Alterations | 21,200.00 |
| 4 Equipment | 10,700.00 |
| 5 Total | \$ 352,545.00 |

30—*Marshall College*

Acct. No. 320

- | | |
|---------------------------------|-----------------|
| 1 Personal Services..... | \$ 1,650,190.00 |
| 2 Current Expenses | 135,250.00 |
| 3 Repairs and Alterations | 56,500.00 |
| 4 Equipment | 57,500.00 |
| 5 Flood Wall Assessment | 3,200.00 |
| 6 Total | \$ 1,902,640.00 |

31—*Fairmont State College*

Acct. No. 321

- | | |
|---------------------------------|---------------|
| 1 Personal Services..... | \$ 536,355.00 |
| 2 Current Expenses..... | 49,580.00 |
| 3 Repairs and Alterations | 28,000.00 |

4	Equipment	50,350.00
5	Total	\$ 664,285.00

32—*Glenville State College*

Acct. No. 322

1	Personal Services.....	\$ 349,275.00
2	Current Expenses.....	41,175.00
3	Repairs and Alterations	24,200.00
4	Equipment	18,200.00
5	Total	\$ 432,850.00

33—*West Liberty State College*

Acct. No. 323

1	Personal Services.....	\$ 367,100.00
2	Current Expenses.....	38,650.00
3	Repairs and Alterations	21,450.00
4	Equipment	58,200.00
5	Total	\$ 485,400.00

34—*Shepherd College*

Acct. No. 324

1	Personal Services.....	\$ 338,885.00
2	Current Expenses.....	38,100.00
3	Repairs and Alterations	21,600.00
4	Equipment	13,350.00
5	Total	\$ 411,935.00

35—*Concord College*

Acct. No. 325

1	Personal Services.....	\$ 566,400.00
2	Current Expenses.....	46,570.00
3	Repairs and Alterations	25,950.00
4	Equipment	22,850.00
5	Total	\$ 661,770.00

36—*West Virginia Institute of Technology*

Acct. No. 327

1	Personal Services.....	\$	438,820.00
2	Current Expenses.....		49,480.00
3	Repairs and Alterations		24,700.00
4	Equipment		45,400.00
5	Total	\$	558,400.00

37—*West Virginia State College*

Acct. No. 328

1	Personal Services.....	\$	804,327.00
2	Current Expenses.....		100,730.00
3	Repairs and Alterations		45,500.00
4	Equipment		33,000.00
5	Total	\$	983,557.00

38—*Bluefield State College*

Acct. No. 329

1	Personal Services.....	\$	324,255.00
2	Current Expenses.....		43,850.00
3	Repairs and Alterations		19,200.00
4	Equipment		15,200.00
5	Total	\$	402,505.00

39—*West Virginia State College—4-H Camp*

Acct. No. 330

1	Personal Services	\$	12,960.00
2	Current Expenses		5,000.00
3	Repairs and Alterations		3,500.00
4	Equipment		2,300.00
5	Total	\$	23,760.00

40—*West Virginia Schools for the Deaf and Blind*

Acct. No. 333

1	Personal Services	\$	379,606.00
2	Current Expenses		132,200.00
3	Repairs and Alterations		23,500.00
4	Equipment		19,850.00
5	Total	\$	555,156.00

41—*State FFA-FHA Camp and Conference Center*

Acct. No. 336

1	Personal Services	\$	13,620.00
2	Current Expenses		6,000.00
3	Repairs and Alterations		5,600.00
4	Equipment		5,900.00
5	Total	\$	31,120.00

42—*Department of Archives and History*

Acct. No. 340

1	Personal Services	\$	21,760.00
2	Current Expenses		4,150.00
3	Equipment		5,000.00
4	Total	\$	30,910.00

43—*West Virginia Library Commission*

Acct. No. 350

1	Personal Services	\$	41,940.00
2	Current Expenses		16,060.00
3	Equipment		7,000.00
4	Books and Periodicals		34,000.00
5	Total	\$	99,000.00

CHARITIES AND CORRECTION

44—*West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services	\$	175,722.00
2	Current Expenses		82,600.00
3	Repairs and Alterations		17,150.00
4	Equipment		18,250.00
5	Total	\$	293,722.00

45—*Forestry Camp for Boys*

Acct. No. 371

1	Personal Services	\$	48,840.00
2	Current Expenses		44,450.00
3	Repairs and Alterations		2,500.00
4	Equipment		3,100.00
5	Total	\$	98,890.00

46—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services	\$	96,903.00
2	Current Expenses		61,900.00
3	Repairs and Alterations		10,500.00
4	Equipment		10,150.00
5	Total	\$	179,453.00

47—*West Virginia State Prison for Women*

Acct. No. 374

1	Personal Services	\$	32,500.00
2	Current Expenses		31,600.00
3	Repairs and Alterations		7,000.00
4	Equipment		1,400.00
5	Total	\$	72,500.00

48—*West Virginia Penitentiary*

Acct. No. 375

1	Personal Services.....	\$	547,040.00
2	Current Expenses.....		477,700.00
3	Repairs and Alterations		29,500.00
4	Equipment		17,700.00
5	Total	\$	1,071,940.00
6	Any unexpended balances remaining in the		
7	"Rebuild Sewerage System" and the		
8	"Complete New Cell Block" accounts at		
9	the close of the fiscal year 1957-58 is here-		
10	by reappropriated for expenditures dur-		
11	ing the fiscal year 1958-59.		

49—*Medium Security Prison*

Acct. No. 376

1	Personal Services.....	\$	178,980.00
2	Current Expenses.....		139,300.00
3	Repairs and Alterations.....		20,000.00
4	Equipment		11,300.00
5	Total.....	\$	349,580.00

50—*West Virginia Children's Home*

Acct. No. 380

1	Personal Services	\$	42,195.00
2	Current Expenses.....		30,425.00
3	Repairs and Alterations		10,900.00
4	Equipment		5,950.00
5	Total	\$	89,470.00

51—*West Virginia Home for Aged and Infirm Colored
Men and Women*

Acct. No. 382

1	Personal Services	\$	35,000.00
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2	Current Expenses	39,325.00
3	Repairs and Alterations	10,200.00
4	Equipment	4,000.00
5	Total	\$ 88,525.00

52—*Andrew S. Rowan Memorial Home*

Acct. No. 384

1	Personal Services	\$ 187,680.00
2	Current Expenses	156,100.00
3	Repairs and Alterations	12,550.00
4	Equipment	8,300.00
5	Total	\$ 364,630.00

HEALTH AND WELFARE

53—*State Health Department*

Acct. No. 400

1	Personal Services	\$ 592,100.00
2	Current Expenses	50,060.00
3	Equipment	4,500.00
4	Cancer Control and Treatment	93,000.00
5	Tuberculosis Field Clinic & Nursing Service	8,480.00
6	Out-Patient Pneumothorax Treatment,	
7	Drugs and Diagnostic Laboratory Serv-	
8	ices	\$ 20,000.00
9	Total	\$ 768,140.00

54—*State Water Commission*

Acct. No. 401

1	Personal Services	\$ 37,960.00
2	Current Expenses	10,000.00
3	Equipment	975.00
4	For cooperation with the U. S. Geological	

5	survey for a program of stream gauging	17,500.00
6	Total.....	\$ 66,435.00

55—*Department of Veterans Affairs*

Acct. No. 404

1	Personal Services	\$ 155,000.00
2	Current Expenses	43,000.00
3	Equipment	1,500.00
4	To provide Educational Opportunities for	
5	Children of War Veterans as provided by	
6	Chapter thirty-nine, Acts of the Legisla-	
7	ture, 1943	12,500.00
8	Total.....	\$ 212,000.00

9 Any unexpended balance remaining in the
 10 appropriation "To Provide Educational
 11 Opportunities for Children of War Veter-
 12 ans" at the close of the fiscal year 1957-58
 13 is hereby reappropriated for expenditure
 14 during the fiscal year 1958-59.

56—*Department of Public Assistance*

Acct. No. 405

1	Personal Services	\$ 1,020,880.00
2	Current Expenses	224,000.00
3	Equipment	8,000.00
4	Public Assistance Grants (Classified Aid)....	7,500,000.00
5	Aid to Crippled Children	300,000.00
6	Medical Services	800,000.00
7	Conservation of Vision and Prevention of	
8	Blindness	40,000.00
9	Child Welfare Services	83,000.00
10	General Relief	125,000.00
11	Boarding Care	340,000.00
12	Social Security Matching Funds	25,600.00
13	Total.....	\$ 10,466,480.00

57—*Department of Public Assistance—
Commodity Distribution*

Acct. No. 406

1	Personal Services	\$	90,000.00
2	Current Expenses		38,400.00
3	Equipment		15,000.00
4	Total	\$	143,400.00

58—*Department of Mental Health*

Acct. No. 410

1	Personal Services	\$	161,640.00
2	Current Expenses		25,000.00
3	Equipment		8,300.00
4	Research and Training		25,000.00
5	Total	\$	219,940.00

59—*West Virginia Training School*

Acct. No. 419

1	Personal Services	\$	273,086.00
2	Current Expenses		143,450.00
3	Repairs and Alterations		13,750.00
4	Equipment		12,300.00
5	Total	\$	442,586.00

60—*Weston State Hospital*

Acct. No. 420

1	Personal Services	\$	1,203,840.00
2	Current Expenses		729,000.00
3	Repairs and Alterations		54,600.00
4	Equipment		30,580.00
5	Total	\$	2,018,020.00

6 Any unexpended balance remaining in the
7 water supply account at the close of the

8 fiscal year 1957-58 is hereby reappropriated
 9 for expenditure during the fiscal year 1958-
 10 59.

61—*Spencer State Hospital*

Acct. No. 421

1	Personal Services.....	\$	555,511.00
2	Current Expenses.....		350,620.00
3	Repairs and Alterations.....		33,000.00
4	Equipment		37,550.00
5	Total	\$	976,681.00

6 All revenue collected by the above spending
 7 unit in excess of the amount required to
 8 pay the principal and interest on outstand-
 9 ing Clinic Bonds shall be deposited to the
 10 State Fund-General Revenue.

62—*Huntington State Hospital*

Acct. No. 422

1	Personal Services	\$	775,940.00
2	Current Expenses.....		522,390.00
3	Repairs and Alterations.....		34,000.00
4	Equipment		34,300.00
5	Total	\$	1,366,630.00

6 All revenue collected by the above spending
 7 unit in excess of the amount required to
 8 pay the principal and interest on outstand-
 9 ing Clinic Bonds shall be deposited to the
 10 State Fund—General Revenue.

63—*Lakin State Hospital*

Acct. No. 423

1	Personal Services	\$	310,233.00
2	Current Expenses.....		169,970.00

3	Repairs and Alterations.....	\$	36,975.00
4	Equipment		14,350.00
5	Total.....	\$	531,528.00

64—Barboursville State Hospital

Acct. No. 424

1	Personal Services	\$	211,288.00
2	Current Expenses.....		128,435.00
3	Repairs and Alterations.....		17,900.00
4	Equipment		6,150.00
5	Total.....	\$	363,773.00

65—Fairmont Emergency Hospital

Acct. No. 425

1	Personal Services	\$	106,880.00
2	Current Expenses.....		70,000.00
3	Repairs and Alterations.....		6,800.00
4	Equipment		5,500.00
5	Total.....	\$	189,180.00

66—Welch Emergency Hospital

Acct. No. 426

1	Personal Services	\$	120,320.00
2	Current Expenses.....		121,100.00
3	Repairs and Alterations.....		13,500.00
4	Equipment		6,000.00
5	Total.....	\$	260,920.00

67—Hopemont Sanitarium

Acct. No. 430

1	Personal Services	\$	420,320.00
2	Current Expenses.....		292,850.00
3	Repairs and Alterations.....		15,000.00
4	Equipment		10,900.00
5	Total.....	\$	739,070.00

68—*Pinecrest Sanitarium*

Acct. No. 431

1	Personal Services	\$	537,360.00
2	Current Expenses		462,940.00
3	Repairs and Alterations		26,500.00
4	Equipment		11,500.00
5	Total	\$	1,038,300.00

69—*Denmar State Hospital*

Acct. No. 432

1	Personal Services	\$	183,440.00
2	Current Expenses		134,375.00
3	Repairs and Alterations		10,000.00
4	Equipment		6,400.00
5	Total	\$	334,215.00

70—*Berkeley Springs Sanitarium*

Acct. No. 436

1	Personal Services	\$	27,800.00
2	Current Expenses		6,800.00
3	Repairs and Alterations		1,000.00
4	Equipment		1,600.00
5	Total	\$	37,200.00

71—*Non-state Institutions*

Acct. No. 437

1	Morris Memorial Hospital	\$	10,000.00
2	Marmet Hospital, Inc.		7,500.00
3	Total	\$	17,500.00

- 4 To be expended by the Department of Public
 5 Assistance to meet actual per capita costs
 6 for hospitalization of needy West Virginia
 7 patients at these institutions.

72—*State Board of Education—Rehabilitation Division*

Acct. No. 440

1	Personal Services	\$	153,730.00
2	Current Expenses		34,010.00
3	Rehabilitation Center		85,090.00
4	Case Services		234,947.00
5	Supervisory Service for Vending Stand Pro-		
6	gram for the Blind		11,920.00
7	Training and Special Projects		11,040.00
8	Total	\$	530,737.00

BUSINESS AND INDUSTRIAL RELATIONS

73—*Bureau of Labor and Department of Weights and Measures*

Acct. No. 450

1	Personal Services	\$	195,126.00
2	Current Expenses		59,000.00
3	Equipment		5,000.00
4	Total	\$	259,126.00

74—*Department of Mines*

Acct. No. 460

1	Personal Services	\$	637,300.00
2	Current Expenses		141,500.00
3	Equipment		35,000.00
4	Total	\$	813,800.00

75—*Commission on Interstate Cooperation*

Acct. No. 472

1	Total	\$	10,000.00
2	Out of the above appropriation the sum of		
3	\$7,500.00 may be made available for West		
4	Virginia's membership in The Council of		
5	State Governments.		

76—*Interstate Commission on Potomac River Basin*

Acct. No. 473

1	West Virginia's contribution to Potomac Riv-	
2	er Basin Interstate Commission.....	\$ 3,600.00

77—*Ohio River Valley Water Sanitation Commission*

Acct. No. 474

1	West Virginia's contribution to the Ohio	
2	River Valley Water Sanitation Commis-	
3	sion	\$ 15,860.00

78—*Southern Regional Education Board*

Acct. No. 475

1	West Virginia's Contribution to Southern	
2	Regional Education Board.....	\$ 28,000.00
3	To be expended upon requisition of the Gov-	
4	ernor.	

79—*Department of Banking*

Acct. No. 480

1	Personal Services.....	\$ 71,660.00
2	Current Expenses.....	27,980.00
3	Equipment	1,000.00
4	Total	\$ 100,640.00

80—*West Virginia State Aeronautics Commission*

Acct. No. 485

1	Personal Services.....	\$ 8,820.00
2	Current Expenses.....	3,550.00
3	Aerial Markers.....	2,500.00
4	Total	\$ 14,870.00

81—*West Virginia Industrial and Publicity Commission*

Acct. No. 486

1	Personal Services.....	\$	71,960.00
2	Current Expenses		63,350.00
3	Equipment		1,000.00
4	Total.....	\$	136,310.00

82—*West Virginia Centennial Commission*

Acct. No. 487

1	Expenses for planning 1963 Centennial cele-		
2	bration	\$	18,340.00

83—*West Virginia Non-intoxicating Beer Commissioner*

Acct. No. 490

1	Personal Services.....	\$	81,650.00
2	Current Expenses.....		41,500.00
3	Equipment		800.00
4	Total	\$	123,950.00

84—*West Virginia Racing Commission*

Acct. No. 495

1	Personal Services	\$	49,860.00
2	Current Expenses		10,300.00
3	Total	\$	60,160.00

AGRICULTURE

85—*Department of Agriculture*

Acct. No. 510

1	Salary of Commissioner.....	\$	11,000.00
2	Other Personal Services.....		134,100.00
3	Current Expenses.....		63,600.00
4	Equipment		8,000.00
5	Eradication and Control of White Pine Blister		15,000.00

6	Eradication and Prevention of Livestock Dis-	
7	eases _____	145,000.00
8	Eradication and Control of Japanese beetle	
9	and other plant pests _____	14,880.00
10	Aid to Dairy Development Program _____	51,820.00
11	Eradication and Control of Oak Wilt _____	40,000.00
12	Total _____	\$ 483,400.00

86—Department of Agriculture—Soil Conservation Committee

Acct. No. 512

1	Personal Services _____	\$ 48,100.00
2	Current Expenses _____	22,250.00
3	Total _____	\$ 70,350.00

87—Department of Agriculture—Marketing and Research

Acct. No. 513

1	For cooperation with the Federal Government	
2	in a program of marketing and research....	\$ 59,000.00
3	Any part or all of this appropriation may be	
4	transferred to Special Revenue Fund for	
5	the purpose of matching federal funds for	
6	the above-named program.	
7	Any unexpended balance remaining in the	
8	Farm Market Facilities Account at the	
9	close of the fiscal year 1957-58 is hereby	
10	reappropriated for expenditure during the	
11	fiscal year 1958-59.	

88—Department of Agriculture—Agricultural Awards

Acct. No. 515

1	Agricultural Awards _____	\$ 39,500.00
2	West Virginia State Fair _____	22,500.00
3	Mountain State Forest Festival _____	10,000.00
4	Total _____	\$ 72,000.00

- 5 To be expended at the discretion of the
 6 Commissioner of Agriculture in accord-
 7 ance with law.

CONSERVATION AND DEVELOPMENT

89—*Geological and Economic Survey Commission*

Acct. No. 520

1	Personal Services.....	\$	72,570.00
2	Current Expenses.....		27,080.00
3	Equipment		3,650.00
4	Cooperative Mapping Program.....		60,000.00
5	Total	\$	163,300.00
6	Of the above appropriation for Current Ex-		
7	penses, the sum of \$15,000.00 may be used		
8	to cooperate with the United States Geo-		
9	logical Survey in Ground Waters Resourc-		
10	es Study.		
11	Of the above appropriation for Cooperative		
12	Mapping Program the sum of \$10,000.00		
13	may be used for preparation of accurate		
14	geographic and political maps of West Vir-		
15	ginia.		

90—*Conservation Commission*

Acct. No. 521

1	Personal Services.....	\$	227,920.00
2	Current Expenses.....		16,000.00
3	Oak Wilt Control.....		4,000.00
4	Advertising and Publicity		10,000.00
5	Total.....		257,920.00
6	Out of the above appropriation the sum of		
7	\$80,000.00 under Personal Services and		
8	\$16,000.00 Current Expenses shall be used		
9	to match federal funds under the Pittman-		
10	Robertson and Dingell-Johnson programs.		

91—*Conservation Commission—Division of State Parks*

Acct. No. 522

1	Personal Services	\$	212,980.00
2	Current Expenses		127,300.00
3	Repairs and Alterations		38,155.00
4	Equipment		5,100.00
5	Forestry Camp Expense.....		26,928.00
6	Total.....	\$	410,463.00

92—*Conservation Commission—Clarke-McNary*

Acct. No. 523

1	For cooperation with the United States De-		
2	partment of Agriculture in Fire Preven-		
3	tion and Control.....	\$	75,000.00
4	Any unexpended balance remaining in this		
5	account at the close of the fiscal year 1957-		
6	58 is hereby reappropriated for expendi-		
7	ture during the fiscal year 1958-59.		

93—*Conservation Commission—Historical Monuments
and Parks*

Acct. No. 561

1	Care and maintenance of:		
2	Point Pleasant Battle Monument and Park	\$	4,000.00
3	Rumsey Monument and Park.....		1,500.00
4	Morgan Morgan Memorial.....		400.00
5	Fairfax Stone.....		400.00
6	Booker T. Washington Park.....		500.00
7	Cathedral Park.....		2,000.00
8	Pinnacle Rock Park.....		1,500.00
9	Total	\$	10,300.00

94—*Department of Veterans Affairs*

Acct. No. 564

1	In aid of Memorial Day Patriotic Exercises..	\$	2,000.00
2	To be expended subject to the approval of the		

- 3 Department of Veterans Affairs upon pres-
- 4 entation of satisfactory plans by the Graf-
- 5 ton G.A.R. Post, American Legion, Veter-
- 6 ans of Foreign Wars and Sons of Veterans.

PROTECTION

95—*Department of Public Safety*

Acct. No. 570

1	Personal Services.....	\$	1,064,020.00
2	Current Expenses.....		614,543.00
3	Repairs and Alterations.....		21,960.00
4	Equipment		112,500.00
<hr/>			
5	Total	\$	1,813,023.00

96—*Adjutant General—State Militia*

Acct. No. 580

1	Personal Services.....	\$	48,068.00
2	Current Expenses.....		153,015.00
3	Repairs and Alterations		7,200.00
4	Equipment		6,300.00
5	Compensation of Commanding Officers,		
6	Clerical Allowances and Uniform Allow-		
7	ances		71,960.00
8	Property Maintenance.....		47,240.00
<hr/>			
9	Total	\$	333,783.00

97—*Division of Civilian Defense*

Acct. No. 581

1	Personal Services.....	\$	19,770.00
2	Current Expenses		5,450.00
3	Equipment		2,350.00
<hr/>			
4	Total	\$	27,570.00

98—*State Armory Board*

Acct. No. 582

1	For insurance, maintenance, repair and		
2	equipment for state-owned Armories.....	\$	30,000.00

99—*Department of Mental Health—Insurance*

Acct. No. 583

1	Fire Insurance Premiums.....	\$	57,413.00
2	To pay insurance premiums on buildings at		
3	state institutions under the supervision of		
4	the Department of Mental Health.		
5	The above appropriation is for premiums for		
6	a three-year period.		

100—*State Board of Education—Insurance*

Acct. No. 584

1	Fire Insurance Premiums	\$	55,000.00
2	To pay fire insurance premiums on buildings		
3	at state colleges and institutions under the		
4	supervision of the State Board of Educa-		
5	tion.		
6	The above appropriation is for premiums for		
7	a three-year period.		
8	To insure contents of buildings.....		6,974.00
9	To insure contents of non-revenue produc-		
10	ing buildings.		
11	Second annual installment due on a policy		
12	covering a five-year period ending June		
13	30, 1963.		
14	Total.....	\$	61,974.00

101—*Commissioner of Public Institutions—Insurance*

Acct. No. 585

1	Fire Insurance Premiums	\$	50,000.00
2	To pay insurance premiums on buildings at		
3	state institutions under the supervision of		

- 4 Commissioner of Public Institutions.
 5 The above appropriation is for premiums for
 6 a three-year period.

102—*State Board of Certified Public Accountants*

Acct. No. 586

1 To pay the per diem of members and other		
2 general expenses	\$	2,000.00
3 From Collections		2,000.00

103—*West Virginia Board of Examiners
 For Practical Nurses*

Acct. No. 587

1 To pay the per diem of members and other		
2 general expenses	\$	10,000.00
3 From Collections		10,000.00

104—*State Board of Examiners for Registered Nurses*

Acct. No. 588

1 To pay the per diem of members and other		
2 general expenses	\$	27,750.00
3 From Collections		27,750.00

105—*State Board of Dental Examiners*

Acct. No. 589

1 To pay the per diem of members and other		
2 general expenses	\$	5,000.00
3 From Collections		5,000.00

106—*State Board of Pharmacy*

Acct. No. 590

1 To pay the per diem of members and other		
2 general expenses	\$	12,000.00
3 From Collections		12,000.00

107—*State Board of Osteopathy*

Acct. No. 591

1 To pay the per diem of members and other		
2 general expenses	\$	1,500.00
3 <i>From Collections</i>		1,500.00

108—*State Board of Optometry*

Acct. No. 592

1 To pay the per diem of members and other		
2 general expenses	\$	2,400.00
3 <i>From Collections</i>		2,400.00

109—*State Board of Embalmers and Funeral Directors*

Acct. No. 593

1 To pay the per diem of members and other		
2 general expenses	\$	10,000.00
3 <i>From Collections</i>		10,000.00

110—*State Board of Registration for Professional Engineers*

Acct. No. 594

1 To pay the per diem of members and other		
2 general expenses	\$	15,000.00
3 <i>From Collections</i>		15,000.00

111—*State Board of Architects*

Acct. No. 595

1 To pay the per diem of members and other		
2 general expenses	\$	3,000.00
3 <i>From Collections</i>		3,000.00

112—*State Veterinary Board*

Acct. No. 596

1 To pay the per diem of members and other		
2 general expenses	\$	500.00
3 <i>From Collections</i>		500.00

113—*State Board of Law Examiners*

Acct. No. 597

1	To pay the per diem of members and other	
2	general expenses _____	\$ 2,400.00

114—*W. Va. Board of Sanitarians*

Acct. No. 599

1	To pay the per diem of members and other	
2	general expenses _____	\$ 900.00
3	From Collections _____	900.00

115—*Auditor's Office—Social Security*

Acct. No. 630

1	To match contributions of state employees	
2	for social security _____	\$ 450,000.00
3	The above appropriation is intended to cover	
4	the state's share of social security costs for	
5	those spending units operating from Gen-	
6	eral Revenue Fund and General School	
7	Fund appropriations. The State Road	
8	Commission, Department of Motor Ve-	
9	hicles, Workmen's Compensation Commis-	
10	sion, Public Service Commission, and	
11	other departments operating from Special	
12	Revenue Funds and/or Federal Funds	
13	shall pay their proportionate share of the	
14	social security cost for their respective di-	
15	visions.	
16	Any unexpended balance remaining in the	
17	appropriation "To match contributions of	
18	state employees for social security" at the	
19	close of the fiscal year 1957-58 is hereby	
20	reappropriated for expenditure during the	
21	fiscal year 1958-59.	

Sec. 2. *Appropriations from Other Funds.*—From the 2 funds designated there is hereby appropriated conditional- 3 ly upon the fulfillment of the provisions set forth in chap-

4 ter thirty-nine, acts of the Legislature, regular session, one
5 thousand nine hundred thirty-nine, the following amounts,
6 as itemized, for expenditure during the fiscal year one
7 thousand nine hundred fifty-nine.

116—*State Road Commission—General Administration
and Engineering*

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	425,000.00
2	Current Expenses		90,000.00
3	Equipment		8,000.00
4	Total	\$	523,000.00

5 In addition to the foregoing appropriations
6 and claims as authorized by this act or by
7 law to be paid from the state road fund,
8 the balance or residue of the annual re-
9 cepts of the state road fund is hereby ap-
10 propriated first for the payment of interest
11 on and principal of outstanding road bonds
12 and thereafter for maintenance, construc-
13 tion and reconstruction of state roads, in
14 accordance with the provisions of chapter
15 seventeen of the code of West Virginia,
16 one thousand nine hundred thirty-one, as
17 amended.

117—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	550,000.00
2	Current Expenses		184,405.00
3	Equipment		9,000.00
4	Purchase of License Plates.....		120,000.00
5	Social Security Matching Fund.....		12,500.00
6	Total	\$	875,905.00

118—*State Tax Commissioner—Gasoline Tax
Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	75,670.00
2	Current Expenses.....		20,350.00
3	Equipment		1,000.00
4	Social Security Matching Fund.....		1,600.00
5	Total	\$	98,620.00

119—*State Board of Education*

Acct. No. 700

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services.....	\$	25,700.00
2	Current Expenses.....		8,400.00
3	Total	\$	34,100.00

120—*State Board of Education—Vocational Division*

Acct. No. 701

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services.....	\$	23,310.00
2	Current Expenses.....		6,500.00
3	Equipment		1,000.00
4	Vocational Aid.....		300,000.00
5	Total	\$	330,810.00

121—*Department of Education—Veterans Education*

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	55,320.00
2	Current Expenses		14,415.00
3	Total	\$	69,735.00

4 Expenditures from this appropriation shall
5 not exceed the amount to be reimbursed by
6 the Federal Government.

7 Federal funds in excess of the amounts
8 hereby appropriated may be made avail-
9 able by budget amendment upon request
10 of the State Superintendent of Schools and
11 approval of The Board of Public Works for
12 any emergency which might arise in the
13 operation of this division during the fiscal
14 year.

122—*Department of Education*

Acct. No. 703

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salary of State Superintendent.....	\$	12,000.00
2	Other Personal Services		195,980.00
3	Current Expenses.....		71,500.00
4	Equipment		1,000.00
5	Total.....	\$	280,480.00

123—*State Board of School Finance*

Acct. No. 704

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services.....	\$	13,960.00
2	Current Expenses.....		2,480.00
3	Total	\$	16,440.00

124—*Department of Education—School Lunch Program*

Acct. No. 705

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	46,000.00
2	Current Expenses.....		10,150.00
3	Aid to Counties—Includes hot lunches and		
4	canning for hot lunches.....		125,000.00
5	Total.....	\$	181,150.00

125—*Department of Education*

Acct. No. 706

TO BE PAID FROM GENERAL SCHOOL FUND

1	Salaries of County Superintendents.....	\$	62,000.00
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126—*Department of Education*

Acct. No. 707

TO BE PAID FROM GENERAL SCHOOL FUND

1	State Aid to Children's Homes.....	\$	25,000.00
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127—*Auditor's Office—Land Department*

Acct. No. 709

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services.....	\$	87,980.00
2	Current Expenses		11,940.00
3	Equipment		7,000.00
4	Total	\$	106,920.00

128—*Department of Education*

Acct. No. 715

TO BE PAID FROM GENERAL SCHOOL FUND

1	Scholarships for Teacher Training	\$	100,000.00
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129—*Real Estate Commission*

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	16,000.00
2	Current Expenses		10,000.00
3	Equipment		1,000.00
4	Social Security Matching Fund.....		300.00
5	Total.....	\$	27,300.00

6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund out of
 8 collections of license fees as provided by
 9 law.

130—*Public Land Corporation*

Acct. No. 802

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	9,750.00
2	Current Expenses		4,000.00
3	Total	\$	13,750.00

4 The total amount of this appropriation shall
 5 be paid from Special Revenue Fund out of
 6 income received by the corporation as pro-
 7 vided by law.

131—*West Virginia Racing Commission*

Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses	\$	5,000.00
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2 The total amount of this appropriation shall
 3 be paid from Special Revenue Fund out
 4 of collections of license fees and fines as
 5 provided by law.

6 No expenditures shall be made from this
 7 account except for hospitalization, medical
 8 care, and/or funeral expenses for persons
 9 contributing to this fund.

132—*Auditor's Office—Land Department*

Operating Fund

Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	15,000.00
2	Current Expenses		16,500.00
3	Total	\$	31,500.00

- 4 The total amount of this appropriation shall
 5 be paid from Special Revenue Fund out of
 6 fees and collections as provided by law.

133—*Department of Finance and Administration*
Division of Purchases—Revolving Fund

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	73,860.00
2 Current Expenses		16,331.00
3 Equipment		5,500.00
4 Social Security Matching Fund		1,600.00
5 Total	\$	97,291.00

- 6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund as pro-
 8 vided by Chapter 25-A, Article 2, Code of
 9 West Virginia.

- 10 The above appropriation includes salaries
 11 and operating expenses.

- 12 There is hereby appropriated from this fund,
 13 in addition to the above appropriation, the
 14 necessary amount for the purchase of sup-
 15 plies for resale.

134—*Department of Agriculture*

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services	\$	135,600.00
2 Current Expenses		40,700.00
3 Equipment		8,300.00
4 Social Security Matching Fund		2,700.00
5 Total	\$	187,300.00

- 6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund out of
 8 collections made by the Department of
 9 Agriculture as provided by law. It is the
 10 intention that special funds in excess of the

11 amounts hereby appropriated shall be
 12 made available by budget amendments up-
 13 on request of the Commissioner of Agri-
 14 culture.

135—*State Committee of Barbers and Beauticians*

Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	17,300.00
2	Current Expenses		8,250.00
3	Social Security Matching Fund		350.00
4	Total	\$	25,900.00

5 The total amount of this appropriation shall
 6 be paid from Special Revenue Fund out of
 7 collections made by the State Committee
 8 of Barbers and Beauticians as provided by
 9 law.

136—*Insurance Commissioner*

Acct. No. 826

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	98,360.00
2	Current Expenses		12,930.00
3	Equipment		1,000.00
4	Social Security Matching Fund		2,000.00
5	Total	\$	114,290.00

6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund out
 8 of collections for license and report fees
 9 as provided by law.

137—*Insurance Commissioner—Fire Marshal*

Acct. No. 827

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	79,820.00
2	Current Expenses		22,940.00

3	Equipment	5,800.00
4	Building Repair and Maintenance.....	2,600.00
5	Social Security Matching Fund.....	1,650.00
6	Total	\$ 112,810.00
7	The total amount of this appropriation shall	
8	be paid from Special Revenue Fund out	
9	of collections of the special tax of one-	
10	half of one per cent of premium receipts	
11	of fire insurance companies as provided	
12	by law.	

138—*Public Service Commission*

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	24,000.00
2	Other Personal Services	262,120.00
3	Current Expenses.....	33,430.00
4	Equipment	4,600.00
5	Social Security Matching Fund	5,000.00
6	Total	\$ 329,150.00
7	The total amount of this appropriation shall	
8	be paid from Special Revenue Fund out of	
9	collections for special license fees from	
10	public service corporations as provided by	
11	law. Out of the above appropriation \$5,-	
12	000.00 may be transferred to the State	
13	Water Commission for use in cooperation	
14	with the U. S. Geological Survey in a pro-	
15	gram of stream gauging.	

139—*Public Service Commission—Motor Carrier
Division*

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$ 138,500.00
2	Current Expenses.....	40,300.00

3	Equipment	4,600.00
4	Social Security Matching Fund	2,700.00
5	Total	\$ 186,100.00

6 The total amount of this appropriation shall
 7 be paid from Special Revenue Fund out of
 8 receipts collected for or by the Public
 9 Service Commission pursuant to and in the
 10 exercise of regulatory authority over mo-
 11 tor carriers as authorized by law.

140—*Conservation Commission*

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 674,920.00
2	Current Expenses	370,930.00
3	Repairs and Alterations	95,510.00
4	Equipment	82,000.00
5	Buildings, Land and Improvements	15,000.00
6	Land Purchase	50,000.00
7	National Forests	56,220.00
8	White Pine Blister Rust Control	5,000.00
9	Oak Wilt Control	4,000.00
10	For payment of bounties	500.00
11	For construction of ponds and small lakes	50,000.00
12	For restocking of game	6,000.00
13	Social Security Matching Fund	12,700.00
14	Total	\$ 1,422,780.00

15 The total amount of this appropriation shall
 16 be paid from Special Revenue Fund out of
 17 fees collected by the Conservation Com-
 18 mission. Expenditures shall be limited to
 19 the amounts appropriated except for Fed-
 20 eral Funds received and Special Funds col-
 21 lected at state parks. Special Funds in ex-
 22 cess of the amounts hereby appropriated
 23 may be made available by budget amend-
 24 ment upon request of the Conservation
 25 Commission and approval of The Board of

- 26 Public Works for any emergency which
 27 might arise in the operation of this Division
 28 during the fiscal year.

141—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$	79,800.00
2	Current Expenses.....		72,470.00
3	Repairs and Alterations.....		6,000.00
4	Equipment		12,000.00
5	Social Security Matching Fund.....		325.00
6	Total	\$	170,595.00
7	The total amount of this appropriation shall		
8	be paid from Special Revenue Fund out of		
9	fees collected for inspection stickers as		
10	provided by law.		

142—*Department of Public Safety—Instruction Permit Fees*

Acct. No. 836

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$	41,820.00
2	Current Expenses.....		26,830.00
3	Total	\$	68,650.00
4	The total amount of this appropriation shall		
5	be paid from Special Revenue Fund out of		
6	fees collected for instruction permits as		
7	provided by law.		

143—*West Virginia Liquor Control Commission*

Acct. No. 837

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salary of Commissioner.....	\$	10,000.00
2	Other Personal Services.....		2,571,680.00
3	Current Expenses.....		698,650.00

4	Repairs and Alterations.....	17,200.00
5	Equipment	27,500.00
6	Social Security Matching Fund	58,000.00

7 Total.....\$ 3,383,030.00

8 The total amount of this appropriation shall
9 be paid from Special Revenue Fund out
10 of liquor revenues.

11 The above appropriation includes the sala-
12 ries of store personnel, store inspectors,
13 store operating expenses and equipment;
14 and salaries, expenses and equipment for
15 administration offices.

16 There is hereby appropriated from liquor
17 revenues, in addition to the above appro-
18 priation, the necessary amount for the
19 purchase of liquor, as provided by law.

144—*West Virginia Merit System Council*

Acct. No. 840

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services.....	\$ 36,440.00
2	Current Expenses.....	9,880.00
3	Social Security Matching Fund	550.00
4	Total	\$ 46,870.00

5 The total amount of this appropriation shall
6 be paid from Special Revenue Fund sup-
7 ported by participating agencies as pro-
8 vided by law.

145—*Department of Labor—Bedding Division*

Acct. No. 843

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 7,980.00
2	Current Expenses	4,550.00
3	Total.....	\$ 12,530.00

4 The total amount of this appropriation shall
 5 be paid from Special Revenue Fund out of
 6 fees, fines and penalties as provided by
 7 law.

146—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services.....	\$	585,300.00
2	Current Expenses.....		230,104.00
3	Equipment		10,600.00
4	Social Security Matching Fund		13,000.00
5	Total	\$	839,004.00

6 There is hereby authorized to be paid out of
 7 the above appropriation for Current Ex-
 8 penses the amount necessary for the pre-
 9 miums on bonds given by the State Treas-
 10 urer and bond custodian for the protec-
 11 tion of the Workmen's Compensation
 12 Fund.

Sec. 3—*Supplemental and Deficiency Appropriations.*—

2 From the State Fund, General Revenue, except as other-
 3 wise provided, there are hereby appropriated the following
 4 amounts, as itemized, for expenditure during the fiscal year
 5 one thousand nine hundred fifty-eight, to supplement the
 6 1957-58 appropriations, and to be available for expenditure
 7 upon date of passage.

147—*Circuit Courts*

Acct. No. 111

1	Current Expenses	\$	8,000.00
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148—*Board of Probation and Parole*

Acct. No. 123

1	Current Expenses.....	\$	2,000.00
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149—Auditor's Office

Acct. No. 150

1	Current Expenses	\$	1,000.00
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150—Teachers' Retirement Board

Acct. No. 298

1	Expense Fund	\$	2,500.00
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151—West Virginia Racing Commission

Acct. No. 495

1	Personal Services	\$	4,230.00
2	Current Expenses		2,500.00
3	Total	\$	6,730.00

152—W. Va. Board of Sanitarians

Acct. No. 599

1	To pay the per diem of members and other		
2	general expenses	\$	600.00
3	From Collections		600.00

Sec. 4. *Appropriations from Surplus Revenues.*—The following items are appropriated from the General Revenue Fund, subject to the following terms and conditions:

(a) The following items are hereby appropriated and are to be available for expenditure only out of the surplus in the Treasury on the first day of July, 1958, or at the time release or encumbrance of any such items is made, subject to the conditions and limitations hereinafter expressed.

(b) The Board of Public Works, at its discretion, may release a part or all of any of the items hereinafter set forth in this section at any time after date of passage of this act, provided, that the total of such releases made prior to July 1, 1958, shall not exceed \$55,000.00.

(c) Expenditures authorized, which are for construction purposes, shall be for a complete and usable unit or project

16 including necessary equipment, and in any case where addi-
 17 tional funds are available, by aid from a Federal Agency or
 18 other source, such fact may be considered by the board in
 19 determining what items should at any time be encumbered
 20 or released for expenditure: *Provided*, That in making such
 21 release the board shall first determine that all funds avail-
 22 able will be provided for completion of a complete and us-
 23 able unit or project, including necessary equipment.

24 (d) Any of the items under this section may be released
 25 or encumbrances made therefor at any time after the first
 26 day of July, 1958, as the board may deem proper, subject
 27 to the limitations herein.

28 Subject to the foregoing conditions, the following appro-
 29 priations are made for the purposes named in this section:

30 Item 1: State Armory Board, for purchase
 31 of lands, construction or repair of armories
 32 or acquisition of armories and/or matching
 33 federal funds for purchase, construction or
 34 repair to armories.....\$ 55,000.00

35 In the event that the amount of surplus shall exceed the
 36 estimated \$1,804,618.00 as shown in the budget document,
 37 the Board of Public Works shall from any excess over
 38 such estimated amount release in the order as set out
 39 herein the following amounts, or so much thereof as avail-
 40 able funds will permit, for:

41 First: To the Department of Agricul-
 42 ture, for construction of a poultry labora-
 43 tory at Moorefield, West Virginia, the sum
 44 of\$ 25,000.00

45 Second: To the Department of Agricul-
 46 ture, for construction of additional farm
 47 market facilities at Beckley, West Virginia,
 48 the sum of\$ 15,000.00

49 Third: To the FFA-FHA Camp and Con-
 50 ference Center, for blacktopping road and
 51 parking areas, the sum of.....\$ 18,000.00

52	Fourth: To the Conservation Commission	
53	—Division of State Parks, for construction	
54	of an amphitheater at Grandview State	
55	Park, the sum of	\$ 50,000.00
56	Fifth: To the Conservation Commission,	
57	for improvements at Panther State Forest,	
58	as follows: (a) Blacktopping road, \$16,000.00;	
59	(b) Bathhouse, \$25,000.00; (c) Trail Im-	
60	provements, \$3,500.00; (d) Game Courts,	
61	\$2,500.00; (e) Tent Camp development,	
62	\$3,000.00; (f) Picnic Shelters, \$9,000.00; (g)	
63	Wading Pool for small Children, \$15,000.00..\$	74,000.00
64	Sixth: To Shepherd College, for comple-	
65	tion of athletic field	\$ 30,000.00
66	Seventh: To Concord College, for comple-	
67	tion of athletic field	\$ 40,000.00
68	Eighth: To the Conservation Commission	
69	—Division of State Parks, for improvements	
70	at North Bend State Park	\$ 25,000.00
71	Ninth: To the Conservation Commission	
72	—Division of State Parks, for purchase of	
73	land and construction of dam at Cathedral	
74	State Park	\$ 5,000.00
75	Tenth: To the Conservation Commission,	
76	for improvements at Kanawha State Forest..\$	50,000.00
77	Eleventh: To the Conservation Commis-	
78	sion—Division of State Parks, for improve-	
79	ment at Cedar Creek State Park	\$ 25,000.00
80	Twelfth: To the Conservation Commis-	
81	sion, for improvement of Camp Creek State	
82	Forest	\$ 17,000.00
83	Thirteenth: To the Conservation Commis-	
84	sion, for planning Sutton Reservoir Recrea-	
85	tion Area	\$ 2,000.00
86	Fourteenth: To the Conservation Com-	
87	mission—Division of State Parks, for im-	
88	provement at Tomlinson Run State Park	\$ 3,000.00

89	Fifteenth: To the Conservation Commission, for improvement at Marland Lake Recreation Area	\$	2,000.00
92	Sixteenth: To the Andrew S. Rowan Memorial Home, for installation of a sprinkler system	\$	93,000.00
95	Seventeenth: To the Conservation Commission—Division of State Parks, for land acquisition and its improvement at Droop Mountain Battlefield State Park.....	\$	4,000.00
99	Eighteenth: To the Conservation Commission—Division of State Parks, for improvements at Holly River State Park as follows: To surface roads and parking area, \$4,000.00; water supply system, \$7,000.00.....	\$	11,000.00
104	Nineteenth: To the Conservation Commission—Division of State Parks, for paving and improvement of roads at Watoga State Park	\$	40,000.00
108	Twentieth: To the Conservation Commission—Division of State Parks, for construction of a swimming pool at Blackwater Falls State Park	\$	50,000.00
112	Twenty-first: To the Conservation Commission, for construction of a fishing lake in the counties of Tyler and/or Doddridge	\$	25,000.00
115	Twenty-second: To the Conservation Commission, for a lake for recreational purposes to be administered by the conservation commission at or near Wardensville in Hardy County	\$	35,000.00
120	Twenty-third: To the Conservation Commission, for a lake at Sleepy Creek State Forest	\$	25,000.00

Sec. 4-a. *Appropriation for Medium Security Prison.*—

2 The following item is appropriated from the Special Revenue Fund.

4 Item 1: Medium Security Prison, to con-
 5 struct two (2) farm buildings to house and
 6 repair farm machinery and equipment. To
 7 be paid from the Farm Sales Account..... \$ 40,000.00

Sec. 5. *Reappropriations.*—The date for expiring the
 2 unexpended balances, if any, in items 1, 2, 4, 5, 6, 7, 8, 9,
 3 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and ap-
 4 propriations, in subsequent paragraph made to Marshall
 5 College, State Tax Commissioner and the Department of
 6 Public Safety, in the appropriations made by and under
 7 authority of Sec. 5 of the 1957 Budget Act is extended to
 8 June 30, 1959, and is hereby reappropriated to June 30,
 9 1959.

10 Item 12, Forestry Camp For Boys, as herein reappropri-
 11 ated may be used to purchase, construct and equip build-
 12 ings at the present site of the Forestry Camp for Boys and
 13 such authority shall become effective from date of passage
 14 of this act.

15 Item 13, Industrial Home for Girls, as herein reappro-
 16 priated, may be used for construction of one large cottage,
 17 in lieu of two cottages as previously appropriated.

18 Item 16, Weston State Hospital, subsection (c) as herein
 19 reappropriated shall be used to purchase Laundry Equip-
 20 ment.

21 Item 23, Conservation Commission—Division of State
 22 Parks, out of the amounts hereby reappropriated in each
 23 and every subsection, a sum not to exceed \$5,000.00 may be
 24 used for the purchase of land.

25 The date for expiring the unexpended balance, if any,
 26 in item 1 in the appropriations made by and under author-
 27 ity of Sec. 4-a of the 1956 Budget Act and reappropriated
 28 under Sec. 6 of the 1957 Budget Act is extended to June 30,
 29 1959, and is hereby reappropriated to June 30, 1959. Sub-
 30 section (f), of Item 1, as herein reappropriated under this
 31 section, may be expended for the construction of a swim-
 32 ming pool at Cedar Creek State Park.

Sec. 6. *Special Revenue Appropriations.*—There is hereby
2 appropriated for expenditure during the fiscal year one
3 thousand nine hundred fifty-nine appropriations made by
4 general law from special revenue which are not paid into
5 the state fund as general revenue under the provisions of
6 section two, article two, chapter twelve of the code of West
7 Virginia, one thousand nine hundred thirty-one: *Provided,*
8 *however,* That none of the moneys so appropriated by this
9 section shall be available for expenditure except in com-
10 pliance with and in conformity to the provisions of articles
11 two and three, of chapter twelve, code of West Virginia,
12 and chapter thirty-nine, acts of the Legislature, regular ses-
13 sion, one thousand nine hundred thirty-nine, and unless the
14 spending unit has filed with the state director of the budget
15 and the state auditor prior to the beginning of each fiscal
16 year:

17 (a) An estimate of the amount and sources of all reve-
18 nues accruing to such fund;

19 (b) A detailed expenditure schedule showing for what
20 purposes the fund is to be expended.

Sec. 7. *Specific Funds and Collection Accounts.*—A fund
2 or collection account, which by law is dedicated to a specific
3 use is hereby appropriated in sufficient amount to meet all
4 lawful demands upon the fund or collection account, and
5 shall be expended according to the provisions of article
6 three, chapter twelve of the code of West Virginia, one
7 thousand nine hundred thirty-one.

Sec. 8. *Appropriations for Refunding Erroneous Pay-*
2 *ments.*—Money that has been erroneously paid into the state
3 treasury is hereby appropriated out of the fund into which
4 it was paid for refund to the proper person.

5 When the officer authorized by law to collect money for
6 the state finds that a sum has been erroneously paid, he shall
7 issue his requisition upon the auditor for the refunding of
8 the proper amount. The auditor shall issue his warrant to
9 the treasurer and the treasurer shall pay the warrant out of
10 the fund into which the amount was originally paid.

Sec. 9. *Sinking Fund Deficiencies.*—There is hereby appropriated to the board of public works a sufficient amount to meet a deficiency that may arise in the funds of the state sinking fund commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The board of public works is authorized to transfer from time to time such amounts to the state sinking fund commission as may be necessary for this purpose.

The state sinking fund commission shall reimburse the State of West Virginia through the board of public works from the first remittance collected from any state agency or local taxing district for which the board of public works advanced funds, with interest at the rate carried by the bonds for which the advance was made.

Sec. 10. *Appropriations from Taxes and License Fees.*— There is hereby appropriated from the cigarette tax for administration and enforcement of the law relating to said tax a sum not to exceed one and one-half per cent of the tax collected or stamps sold. There is hereby appropriated from the soft drink tax revenues for administration and enforcement of the law relating to said tax, a sum not to exceed two and one-half per cent of the total revenues collected. All such salaries and expenses, authorized by law as aforesaid, shall be paid by the tax commissioner through the state treasurer out of gross collections.

Sec. 11. *Appropriations to Pay Costs of Publication of Delinquent Corporations.*—There is hereby appropriated out of the state fund, general revenue, out of funds not otherwise appropriated to be paid upon requisition of the auditor and/or the governor, as the case may be, a sum sufficient to pay the cost of publication of delinquent corporations as provided by sections seventy-five and seventy-seven of article twelve, chapter eleven, code of West Virginia.

Sec. 12. *Appropriations for Local Governments.*—There is hereby appropriated for payment to counties, districts, and municipal corporations such amounts as will be neces-

4 sary to pay taxes due county, district, and municipal cor-
5 porations and which have been paid into the treasury:

- 6 (a) For the redemption of lands;
- 7 (b) By public service corporations;
- 8 (c) For tax forfeitures.

Sec. 13. *Total Appropriations.*—Where only a total sum
2 is appropriated to a spending unit that total sum shall in-
3 clude personal services, current expenses, and capital out-
4 lay, except as otherwise provided in Title I, Section 3.

Sec. 14. *General School Fund.*—The balance of the pro-
2 ceeds of the general school fund remaining after the pay-
3 ment of the appropriations made by this act is appropriated
4 for expenditure in accordance with section six, article nine,
5 chapter eighteen of the code of West Virginia, one thousand
6 nine hundred thirty-one, as amended.

Title 3. Administration.

Section

1. Appropriations conditional.
2. Constitutionality.

Section 1. *Appropriations Conditional.*—The expenditures
2 of the appropriations made by this act, except those appro-
3 priations made to the legislative and judicial branches of the
4 state government, are conditioned upon the compliance by
5 the spending unit with the requirements of article five,
6 chapter five of the code of West Virginia, one thousand nine
7 hundred thirty-one, as amended by chapter thirty-nine, acts
8 of the Legislature, regular session, one thousand nine hun-
9 dred thirty-nine.

Sec. 2. *Constitutionality.*—If any part of this act is de-
2 clared unconstitutional by a court of competent jurisdiction,
3 its decision shall not affect any portion of this act which
4 remains, but the remaining portions shall be in full force
5 and effect as if the portion declared unconstitutional had
6 never been a part of the act.

CHAPTER 2

(House Bill No. 26—By Mr. Kessel and Mr. Myles)

AN ACT to amend and reenact sections six-(ten) and six-(twenty-nine), article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assistant prosecuting attorneys and stenographer to the prosecuting attorney in the counties of Fayette and Mineral.

[Passed February 5, 1958, in effect from passage. Approved by the Governor.]

Article 7. Salaries; Deputies and Assistants and Their Salaries.

Section

6-(10). Fayette county.

6-(29). Mineral county.

Be it enacted by the Legislature of West Virginia:

That sections six-(ten) and six-(twenty-nine), article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 6-(10). *Fayette County.*—For the county of
 2 Fayette, first assistant attorney, five thousand dollars;
 3 second assistant attorney, four thousand four hundred
 4 dollars; one stenographer at a salary to be fixed by the
 5 county court.

Sec. 6-(29). *Mineral County.*—For the county of
 2 Mineral, one assistant attorney, not more than one thou-
 3 sand two hundred dollars; one stenographer, not more
 4 than three thousand dollars.

—C—

CHAPTER 3

(House Bill No. 9—By Mr. McCoy)

AN ACT to amend and reenact section one-v, article two, chapter fifty-one of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, relating to the terms of the circuit court of the twenty-second judicial circuit.

[Passed January 28, 1958; in effect ninety days from passage. Approved by the Governor.]

Article 2. Circuit Courts; Circuit, Criminal and Intermediate Judges.

Section

1-v. Twenty-second circuit.

Be it enacted by the Legislature of West Virginia:

That section one-v, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1-v. *Twenty-second Circuit.*—For the county of
2 Hampshire, on the first Tuesday in January, March and
3 July, and the third Tuesday in September.

4 For the county of Hardy, on the third Tuesday in Febru-
5 ary, June and October.

6 For the county of Pendleton, on the third Tuesday in
7 March, the fourth Tuesday in July, and the first Tuesday
8 in November.

CHAPTER 4

(Senate Bill No. 3—By Mr. Carrigan and Mr. Martin)

AN ACT to amend and reenact section two, article eight, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to librarian, bond, assistants and compensation.

[Passed February 5, 1958; in effect July 1, 1958. Approved by the Governor.]

Article 8. State Law Libraries.

Section

2. Librarian; bond; assistants; compensation.

Be it enacted by the Legislature of West Virginia:

That section two, article eight, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 2. *Librarian; Bond; Assistants; Compensation.*—
2 The supreme court of appeals, or the judges thereof in
3 vacation, shall appoint a competent librarian to have im-
4 mediate custody of the West Virginia law library under
5 the direction of the court. Such librarian shall give bond
6 in a penalty fixed by the court of not less than two nor
7 more than five thousand dollars, with surety thereon, to
8 be approved by the court, and conditioned as provided for
9 official bonds. Such bond shall be deposited for safekeep-
10 ing with the clerk of the court. The librarian shall be an
11 officer of the court and shall hold his office and be re-
12 movable at its pleasure. Vacancies in the office of librarian
13 occurring during vacation of the court may be filled by
14 appointment in writing made by the judges of the court,
15 or any three of them. When, in the opinion of the court,
16 other employees are needed for the proper protection
17 and use of the library, it may employ such assistants as
18 may be necessary for that purpose. The salary of the li-
19 brarian shall be fixed by the court, and shall be not more
20 than seven thousand dollars per annum payable in monthly
21 installments, and the expense of such assistants shall be
22 fixed by the court and shall be paid upon order of the court.

CHAPTER 5

(Senate Bill No. 34—By Mr. Bean, Mr. President)

AN ACT to amend and reenact section three, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the provision of incentives encouraging the several counties of the state to raise additional funds for the support of free schools by designating a method of computing the local share of the counties in state school funds based on the true and actual value of property within each county, and providing for an

appraisal of such property by the state tax commissioner in order to determine said value.

(Passed February 3, 1958; in effect from passage. Approved by the Governor.)

Article 9-a. Allocation of State Aid for Schools.

Section

3. Computation of local share; appraisal by tax commissioner.

Be it enacted by the Legislature of West Virginia:

That section three, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3. *Computation of Local Share; Appraisal by Tax Commissioner.*— On the basis of the most recent survey of property valuations in the state, completed as to all classes of property in all counties determined by the tax commissioner under present or former provisions of this article, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in the preceding section, the amount of revenue which such levies would produce if levied upon one hundred per cent of the true and actual value of each of the several classes of property contained in the report or revised report of such value, made to it by the tax commissioner as follows: (1) The state board shall first take ninety-seven and one-half per cent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county. (2) The state board shall then apply these rates to the appraised value of other property in each classification in the county, as determined by the tax commissioner, and shall deduct therefrom five per cent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. Fifty per cent of the amount so determined shall be added to the ninety-seven

24 and one-half per cent of public utility taxes computed as
25 provided above and this total shall be the local share of
26 the particular county.

27 The tax commissioner shall make or cause to be made
28 an appraisal of all non-utility property, both real and per-
29 sonal, in the several counties of the state. Such appraisal
30 shall be based on the true and actual value of said proper-
31 ty. In making or causing to be made such appraisal,
32 the tax commissioner after consultation with the county
33 court shall employ a competent property appraisal firm
34 or firms to appraise industrial and commercial properties,
35 which appraisal shall be under his supervision and direc-
36 tion. In making or causing to be made such appraisal, the
37 tax commissioner may use such methods of checking prop-
38 erty values and determining the amount of property in
39 the several classes of property provided by law, and may
40 use such accepted procedures as are customarily employed
41 for appraisal purposes. He may employ such assistants as
42 available appropriations will permit. Such appraisal of all
43 said property in the several counties shall be completed
44 prior to the first day of January, one thousand nine hun-
45 dred sixty-one. Each year thereafter the tax commis-
46 sioner shall maintain the appraisal by making or causing to
47 be made such surveys, examinations, audits, maps and in-
48 vestigations of the value of the several classes of property
49 in each county which should be listed and taxed under
50 the several classifications, and shall determine the ap-
51 praised value thereof based upon the true and actual val-
52 ues thereof. On the basis of information so ascertained, the
53 tax commissioner shall annually revise his reports to the
54 Legislature and to the state board concerning such ap-
55 praisals, such reports to be made not later than the first
56 day of January of each year.

57 As the appraisal of property in a county is completed
58 under this section, the county assessor shall use such ap-
59 praised valuation as a basis for determining the assessed
60 valuation of the several classes of property. The ratio of
61 assessed valuation to the new appraised valuation as de-
62 termined under the provisions of this section shall not be

63 less than such ratio as required by section fifteen of this
64 article.

65 In conjunction with and as a result of the appraisal
66 herein set forth the tax commissioner shall have the power,
67 and it shall be his duty, to establish a permanent records
68 system for each county in the state, consisting of:

69 (1) Tax maps of the entire county drawn to scale or
70 aerial maps, which maps shall indicate all property and
71 lot lines, set forth dimensions or areas, indicate whether
72 the land is improved, and identify the respective parcels
73 or lots by a system of numbers, or symbols and numbers,
74 whereby the ownership of such parcels and lots can be as-
75 certained by reference to the property record cards and
76 property owner's index;

77 (2) Property record cards arranged geographically ac-
78 cording to the location of property on the tax maps, which
79 cards shall set forth the location and description thereof,
80 the acreage or dimensions, description of improvements,
81 if any, the owner's name, address and date of acquisition,
82 the purchase price, if any, set forth in the deed of acquisi-
83 tion, the amount of tax stamps, if any, on the deed, the as-
84 sessed valuation, and the identifying number, or symbol
85 and number, shown on the tax map;

86 (3) Property owner's index consisting of an alphabeti-
87 cal listing of all property owners, setting forth brief de-
88 scriptions of each parcel or lot owned, and cross-indexed
89 with the property record cards and the tax map.

90 The tax commissioner is hereby authorized and em-
91 powered to enter into such contracts as may be necessary,
92 and for which funds may be available, to establish the
93 permanent records system herein provided for, or may
94 through his staff and employees, prepare and complete
95 such system.

96 The cost of conducting the appraisal herein provided for
97 shall be borne jointly by the state and the several counties
98 in the following manner and terms: There shall be ap-
99 propriated from the general revenue fund not less than one
100 million five hundred thousand dollars for each of the three
101 following fiscal years: One thousand nine hundred fifty-

102 eight—fifty-nine, one thousand nine hundred fifty-nine—
103 sixty, and one thousand nine hundred sixty—sixty-one.

104 Each county shall furnish, through its county court, not
105 more than ten per cent of the cost of such appraisal or re-
106 appraisal and permanent records system for such county.
107 Such county costs may be paid over a period of three
108 years with the approval of the tax commissioner. If a
109 county has employed a professional appraisal firm to con-
110 duct an appraisal or reappraisal of all or a part of non-
111 utility property within the past five years, and such ap-
112 appraisal, or any other appraisal or reappraisal has been or
113 shall have been accepted by the tax commissioner, credit
114 shall be allowed to such county for its portion of the state-
115 wide appraisal costs and any contract with appraisal firm
116 or firms shall not be made for appraisal or reappraisal of
117 such property except and unless requested by such county,
118 or shown to be necessary by the tax commissioner: *Pro-*
119 *vided, however,* That until the completion of the appraisal
120 herein provided for in all of the fifty-five counties of the
121 state, the local share for each county shall be determined
122 on the basis of the annual survey of property valuations
123 by the tax commissioner, in this state, as hereinbefore
124 provided.

125 A detailed report of appraisal for each year similar to
126 reports now being made showing the results of the survey
127 for the previous year shall be made by the tax commis-
128 sioner as of January first for the Legislature and the board
129 of school finance.

130 Except as otherwise provided in this bill, the coordi-
131 nated effort provided by House Concurrent Resolution
132 No. 8 adopted by the Legislature, regular session, one
133 thousand nine hundred fifty-seven, shall not be disturbed.

—c—

CHAPTER 6

(Senate Bill No. 18—By Mr. Bean, Mr. President, and Mr. Carrigan)

AN ACT to amend article eleven, chapter eighteen of the code
of West Virginia, one thousand nine hundred thirty-one,

as amended, by adding thereto a new section, to be designated section four-b, relating to the authority of the board of governors to collect fees and other charges from patients at the West Virginia university medical center and to the use and disposition thereof.

[Passed February 3, 1958; in effect from passage. Approved by the Governor.]

Article 11. West Virginia University.

Section

4-b. Authority to fix and collect fees and other charges at West Virginia university medical center; disposition thereof.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, to be designated section four-b, to read as follows:

Section 4-b. *Authority to Fix and Collect Fees and Other Charges at West Virginia University Medical Center; Disposition Thereof.*—The board of governors of West Virginia university shall have authority to collect from patients at the West Virginia university medical center such hospital, clinic, laboratory and other fees and charges as may be fixed by the board from time to time. All such fees and charges collected at the medical center shall be paid into the special medical school fund heretofore created in the state treasury under the provisions of section two, article nineteen, chapter eleven of this code, and shall be used solely for the construction; maintenance and operation of the medical center.

CHAPTER 7

(Senate Bill No. 19—By Mr. Bean, Mr. President, and Mr. Carrigan)

AN ACT to amend article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, to be designated

section ten-a, relating to the authority of the board of governors of West Virginia university to establish, maintain and operate graduate centers of science and engineering.

[Passed January 31, 1958; in effect from passage. Approved by the Governor.]

Article 11. West Virginia University.

Section

10-a. Establishment and operation of graduate centers.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, to be designated section ten-a, to read as follows:

Section 10-a. *Establishment and Operation of Graduate Centers.*—The board of governors is hereby authorized and empowered to establish, maintain and operate one or more graduate centers of science and engineering at such place or places within the state as may be deemed advisable. For these purposes it is hereby authorized and empowered to enter into written contracts and/or agreements with any person for support of such graduate centers, and to accept gifts, donations, other contributions, facilities and aid in establishing and operating the same. The board shall provide for the charging and collection at each graduate center of such enrollment, tuition, registration and other fees or charges as the board may deem necessary to provide for the maintenance and operation of the center on a self-supporting basis.

All such fees, charges, contributions, gifts and donations paid or collected at any graduate center shall be paid into a special fund and shall be used solely for the maintenance and operation of the graduate center at which they were collected.

No such graduate center shall be established unless and until the board of governors shall determine that all facilities, fees, contributions, charges, gifts and donations

24 paid, collected or available shall be sufficient to meet and
25 discharge all costs of the establishment, operation and
26 maintenance of such center. In the event the fees, charges,
27 gifts, donations, contributions, facilities and other aid will
28 not be sufficient to provide for the continued operation and
29 maintenance of such center on a self-supporting basis, as
30 hereinbefore set forth, the said board of governors shall
31 close the same at the end of the semester in which such
32 determination shall be made.

CHAPTER 8

(House Bill No. 46—By Mr. Christian, of Cabell, and Mr. Rife)

AN ACT to amend and reenact sections one, two and three, article twelve-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorization to issue revenue bonds for certain capital improvements at Marshall college.

[Passed February 5, 1958; in effect from passage. Approved by the Governor.]

Article 12-a. Revenue Bonds for Marshall College Capital Improvements.

Section

1. West Virginia board of education authorized to issue revenue bonds for certain capital improvements.
2. Special Marshall college capital improvements fund created in state treasury; collections to be paid into special fund; authority of West Virginia board of education to pledge such collections as security for revenue bonds.
3. Issuance of revenue bonds.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, article twelve-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *West Virginia Board of Education Authorized to Issue Revenue Bonds for Certain Capital Improvements.*
2 to Issue Revenue Bonds for Certain Capital Improvements.
3 —The West Virginia board of education shall have au-
4 thority, as provided in this article, to issue revenue bonds
5 of the state, not to exceed one million three hundred fifty
6 thousand dollars in principal amount thereof, to finance
7 the cost of providing a health and physical education
8 building for Marshall college. The principal of and inter-
9 est on such bonds shall be payable solely from the special
10 non-revolving fund herein provided for such payment.
11 The costs of any such building or buildings shall include
12 the cost of acquisition of land, the construction and equip-
13 ment of any such building or buildings, and the provision
14 of roads, utilities and other services necessary, appur-
15 tenant or incidental to such building or buildings; and
16 shall also include all other charges or expenses necessary,
17 appurtenant or incidental to the construction, financing
18 and placing in operation of any such building or buildings.

Sec. 2. *Special Marshall College Capital Improvements Fund Created in State Treasury; Collections to Be Paid Into Special Fund; Authority of West Virginia Board of Education to Pledge Such Collections as Security for Revenue Bonds.*—There is hereby created in the state treasury
2 Fund Created in State Treasury; Collections to Be Paid
3 Into Special Fund; Authority of West Virginia Board of
4 Education to Pledge Such Collections as Security for Reve-
5 nue Bonds.—There is hereby created in the state treasury
6 a special non-revolving Marshall college capital improve-
7 ments fund. On and after the first day of July, one thou-
8 sand nine hundred fifty-seven, there shall be paid into
9 such special fund all fees collected under the provisions
10 of section one, article one-a, chapter twenty-five of this
11 code, from students at Marshall college, except such fees
12 as are required by that section to be paid into other special
13 funds.

14 The board of education shall have authority to pledge
15 all or such part of the revenue paid into the special Mar-
16 shall college capital improvements fund as may be needed
17 to meet the requirements of the sinking fund established
18 in connection with any revenue bond issue authorized
19 by this article, including a reserve fund for the payment
20 of the principal of and interest on such revenue bond issue
21 when other moneys in the sinking fund are insufficient

22 therefor; and may provide in the resolution authorizing
23 any issue of such bonds, and in any trust agreement made
24 in connection therewith, for such priorities on the revenues
25 paid into the special fund as may be necessary for the
26 protection of the prior rights of the holders of bonds issued
27 at different times under the provisions of this article.

28 If any balance shall remain in the special Marshall
29 college capital improvements fund after the board has
30 issued the maximum of one million three hundred fifty
31 thousand dollars worth of bonds authorized by this
32 article, and after the requirements of all sinking funds
33 and reserve funds established in connection with the issue
34 of such bonds have been satisfied, such balance may and
35 shall be used solely for the redemption of any of the out-
36 standing bonds issued hereunder which by their terms
37 are then redeemable, or for the purchase of bonds at the
38 market price, but at not exceeding the price, if any, at
39 which such bonds shall in the same year be redeemable;
40 and all bonds redeemed or purchased shall forthwith be
41 cancelled and shall not again be issued. Whenever all
42 outstanding bonds issued hereunder shall have been paid,
43 the special Marshall college capital improvements fund
44 shall cease to exist and any balance then remaining in
45 such fund shall be transferred to the general revenue fund
46 of the state. Thereafter all fees formerly paid into such
47 special fund shall be paid into the general revenue fund
48 of the state.

Sec. 3. *Issuance of Revenue Bonds.*—The issuance of
2 bonds under the provisions of this article shall be author-
3 ized by a resolution of the board of education, which shall
4 recite an estimate by the board of the cost of the proposed
5 building or buildings; and shall provide for the issuance
6 of bonds in an amount sufficient, when sold as hereinafter
7 provided, to provide moneys sufficient to pay such cost,
8 less the amount of any other funds available for the con-
9 struction of the building or buildings from any appropria-
10 tion, grant or gift therefor. Such resolution shall pre-
11 scribe the rights and duties of the bondholders and the
12 board, and for such purpose may prescribe the form of the

13 trust agreement hereinafter referred to. The bonds shall
14 be of such series, bear such date or dates, mature at such
15 time or times not exceeding thirty years from their respec-
16 tive dates, bear interest at such rate or rates not exceeding
17 five per cent per annum, payable semi-annually; be in
18 such denominations; be in such form, either coupon or
19 fully registered without coupons, carrying such registra-
20 tion exchangeability and interchangeability privileges; be
21 payable in such medium of payment and at such place or
22 places; be subject to such terms of redemption at such
23 prices not exceeding one hundred five per cent of the
24 principal amount thereof, and be entitled to such priorities
25 on the revenues paid into the special state colleges capital
26 improvements fund as may be provided in the resolution
27 authorizing the issuance of the bonds or in any trust
28 agreement made in connection therewith. The bonds shall
29 be signed by the governor, and by the president of the
30 board of education, under the great seal of the state, at-
31 tested by the secretary of state, and the coupons attached
32 thereto shall bear the facsimile signature of the president
33 of the board. In case any of the officers whose signatures
34 appear on the bonds or coupons cease to be such officers
35 before the delivery of such bonds, such signatures shall
36 nevertheless be valid and sufficient for all purposes the
37 same as if such officers had remained in office until such
38 delivery.

39 Such bonds shall be sold in such manner as the board
40 may determine to be for the best interests of the state,
41 taking into consideration the financial responsibility of
42 the purchaser, the terms and conditions of the purchase,
43 and especially the availability of the proceeds of the
44 bonds when required for payment of the cost of such
45 building or buildings, such sale to be made at a price
46 not lower than a price which, when computed upon stand-
47 ard tables of bond values, will show a net return of not
48 more than six per cent per annum to the purchaser upon
49 the amount paid therefor. The proceeds of such bonds
50 shall be used solely for the payment of the cost of such
51 building or buildings, and shall be deposited in the state
52 treasury in a special fund and checked out as provided

53 by law for the disbursement of other state funds. If the
54 proceeds of such bonds, by error in calculation or other-
55 wise, shall be less than the cost of such building or build-
56 ings, additional bonds may in like manner be issued to
57 provide the amount of the deficiency, but in no case to
58 exceed one million three hundred fifty thousand dollars.
59 as provided in section one of this article; and unless other-
60 wise provided for in the resolution or trust agreement
61 hereinafter mentioned, shall be deemed to be of the same
62 issue, and shall be entitled to payment from the same
63 fund, without preference or priority, as the bonds before
64 issued for such building or buildings. If the proceeds of
65 bonds issued for such building or buildings shall exceed
66 the cost thereof, the surplus shall be paid into the sinking
67 fund to be established for payment of the principal and
68 interest of such bonds as hereinafter provided. Prior to
69 the preparation of definitive bonds, the board may, under
70 like restrictions, issue temporary bonds with or without
71 coupons, exchangeable for definitive bonds upon their
72 issuance.

73 The bonds issued under the provisions of this article
74 shall be and have all the qualities of negotiable instru-
75 ments under the law merchant and under the negotiable
76 instruments law of this state.

CHAPTER 9

(House Bill No. 31—By Mr. Myles and Mr. Seibert)

AN ACT to amend and reenact section thirty-one, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the construction, etc., of dormitories, etc., at state educational institutions; fixing certain powers and duties in connection therewith.

Article 1. Organization; General Powers and Duties; Supervision of State Institutions.**Section**

31. State debt not permitted; acceptance of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

Be it enacted by the Legislature of West Virginia:

That section thirty-one, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 31. *State Debt not Permitted; Acceptance of Loans or Temporary Advances from, and Contracts and Agreements with, Federal Agencies or Private Parties.*— Nothing in these sections dealing with dormitories, homes or refectories shall be so construed or interpreted as to authorize or permit the incurring of state debt of any kind or nature as contemplated by the constitution of this state in relation to the state debt. The dormitories, homes or refectories herein are of the character described as self-liquidating projects under the laws of the United States.

Any state agency authorized to issue bonds under the provisions of this article is authorized and empowered to accept loans or grants or temporary advances for the purpose of paying part or all of the cost of construction of the dormitories, homes or refectories and the other purposes herein authorized, from the United States of America or such federal or public agency or department of the United States or any private agency, corporation or individual, which temporary advances may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or such federal or public agency or department of the United States, or with any private agency, corporation or individual: *Provided, however,* That if such bonds are not sold to and purchased by the United States of America or any such

29 federal or public agency or department, then the state
30 agency shall advertise such bonds for sale, on sealed bids,
31 which advertisement shall be published at least once a
32 week for three weeks, the first publication to be made at
33 least twenty-one days preceding the date fixed for the
34 reception of bids, in two newspapers published and of
35 general circulation in the state and of opposite political
36 affiliation, and such advertisement shall also be published
37 in a financial paper published either in the city of New
38 York, in the state of New York, or the city of Chicago, in
39 the state of Illinois. The state agency may reject any
40 and all bids. If the bonds be not sold pursuant to such
41 advertisement, they may, within sixty days after the date
42 advertised for the reception of bids, be sold by the state
43 agency at private sale, but no private sale shall be made
44 at a price less than the highest bid which shall have been
45 received pursuant to such advertisement. If not sold,
46 such bonds shall be readvertised in the manner herein
47 provided.

48 The provisions and parts of this act are separable and
49 are not matters of mutual essential inducement, and it is
50 the intention to confer the whole or any part of the
51 powers herein provided for, and if any of the sections or
52 provisions, or parts thereof, are for any reason illegal or
53 invalid, it is the intention that the remaining sections
54 and provisions or parts thereof shall remain in full force
55 and effect.

CHAPTER 10

(House Bill No. 16—By Mr. Speaker, Mr. Flannery, and Mr. Seibert)

AN ACT to amend and reenact section one, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the imposition and collection of enrollment and other fees at state educational institutions.

[Passed February 1, 1958; in effect from passage. Approved by the Governor.]

Article I-a. Fees and Other Money Collected at State Institutions.**Section**

1. Enrollment and other fees at educational institutions; refund of fees.

Be it enacted by the Legislature of West Virginia:

That section one, article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

Section 1. *Enrollment and Other Fees at Educational Institutions; Refund of Fees.*—The governing boards of state educational institutions shall fix enrollment, tuition, registration, and other fees for each semester or school term for the different classes or categories of students enrolling at the state educational institutions, and may include among such fees any one or more of the following: (1) Health service fees; (2) infirmary fees; (3) student activities, recreational, athletic and extra-curricular fees; and (4) graduate center fees, if the establishment of graduate centers of science and engineering are otherwise authorized by law. All fees collected under (1), (2) and (3) shall be paid into special funds and shall be used only for the purposes for which the fees are collected, and all fees collected at any graduate center shall be paid into a special fund and shall be used solely for the maintenance and operation of the graduate center at which they were collected: *Provided, however,* That except in the case of graduate center fees, the maximum fees to be collected under this section for resident students shall not exceed two hundred dollars per semester; and for nonresident students, five hundred dollars per semester. The schedule of fees, and any changes therein, shall be entered in the minutes of the meetings of the governing board, and the governing board shall file with the state auditor and the director of the budget division a certified copy of such schedule and changes.

In addition to the fees mentioned in the preceding paragraph, but subject to all requirements and within the limits fixed thereby, the governing board of any state educational institution may impose and collect a

32 student union building fee. All such building fees col-
33 lected at the institution shall be paid into a special fund
34 and shall be used only for the eventual construction and
35 operation of a student union building or for the renova-
36 tion of an existing structure for use as a student union
37 building, or for the payment of the principal of and in-
38 terest on any bonds issued to finance part or all of the
39 construction of a student union building or the renova-
40 tion of an existing structure for use as a student union
41 building. Until such time as the special fund, together
42 with any other moneys available for the purpose, may
43 be large enough to defray the cost of providing a student
44 union building, all moneys in the fund may be invested in
45 any such bonds or other securities as are now or may
46 hereafter be authorized as proper investments for state
47 funds.

48 Refund, as an erroneous payment, may be made of any
49 such fees, upon the voluntary or involuntary withdrawal
50 from classes of any student, until eight weeks of the
51 school semester or term have expired, but no refund may
52 be made thereafter.

CHAPTER 11

(Senate Bill No. 21—By Mr. Bean, Mr. President, and Mr. Carrigan)

AN ACT to amend article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, to be designated section one-a, relating to the awarding of scholarships by the governing boards of state educational institutions.

[Passed January 30, 1958; in effect from passage. Approved by the Governor.]

Article 1-a. Fees and Other Money Collected at State Institutions.

Section

1-a. Scholarships at educational institutions; conditions and limitations.

Be it enacted by the Legislature of West Virginia:

That article one-a, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, to be designated section one-a, to read as follows:

Section 1-a. *Scholarships at Educational Institutions; Conditions and Limitations.*—Scholarships entitling recipients to waiver of enrollment, tuition, registration, and other fees, heretofore established by the governing boards of state educational institutions, may be continued and other such scholarships may be established from time to time by the governing boards, subject to the following conditions and limitations:

(1) No state educational institution shall have in effect at any time such scholarships in a number which exceeds five per cent of the maximum number of full-time students registered at any time during the immediately preceding academic year.

(2) Each such scholarship shall entitle the recipient thereof to attend a designated state educational institution without payment of such enrollment, tuition, registration, and other fees as may be prescribed by the governing board of that institution and for a period of time not to exceed eight semesters of undergraduate study.

(3) The governing boards shall make rules governing the award of such scholarships, the issuance and cancellation of certificates entitling the recipients to the benefits thereof, the use of such scholarships by the recipients, and the rights and duties of the recipients in respect to such scholarships. Such rules shall not be inconsistent with the provisions of this section.

(4) The awarding of such scholarships shall be entered in the minutes of the meetings of the governing board, and the governing board shall file with the state auditor and the director of the budget division a certified copy of the rules governing the award of such scholarships and of a list of the names of the recipients thereof.

CHAPTER 12

(House Bill No. 36—By Mr. Myles)

AN ACT to amend article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-a, relating to the additional premium tax on insurance.

[Passed February 6, 1958; in effect July 1, 1958. Became a law without the approval of the Governor.]

Article 3. Life Insurance.

Section

14-a. Additional premium tax.

Be it enacted by the Legislature of West Virginia:

That article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, to be designated section fourteen-a, to read as follows:

Section 14-a. *Additional Premium Tax.*—For the purpose of providing additional revenue for the state general revenue fund, there is hereby levied and imposed, on and after midnight on the last day of June, one thousand nine hundred fifty-eight, in addition to the taxes imposed by section fourteen of this article, an additional premium tax equal to one percent of such gross direct premiums, including dividends (by whatever name called) on participating policies applied in reduction of premiums, less premiums returned to policyholders because of cancellation of policy. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax shall be applicable to the levy, imposition and collection of such additional tax.

All monies received from the additional tax imposed by this section, less deductions allowed by this article

18 for refunds and for costs of administration, shall be re-
19 ceived by the commissioner and shall be paid by him
20 into the state treasury for the benefit of the state fund.

21 The provisions of this act shall expire June thirty, one
22 thousand nine hundred sixty.

CHAPTER 13

(House Bill No. 2—By Mr. Myles and Mr. Seibert)

AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting article one and article two thereof, and by adding to said chapter a new article, designated article two-b, all relating to coal mining, the safety and health of persons employed within or at mines within this state and the protection and preservation of mining property and property used in connection therewith; and providing penalties for violation of certain provisions thereof.

[Passed February 4, 1958; in effect July 1, 1958. Approved by the Governor.]

Article

1. Administration; Enforcement.
2. Coal Mines.
- 2-b. Auger Mining.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting article one and article two thereof and by adding to said chapter a new article, designated article two-b, all to read as follows:

Article 1. Administration; Enforcement.

Section

1. Definitions.
2. Department of mines.
3. Director of the department of mines; appointment; term of office.

4. Same; powers and duties.
5. Same; eligibility; salary.
6. Same; oath; bond.
7. Mine inspectors; districts and divisions; employment; tenure; oath; bond.
8. Same; eligibility for appointment; qualifications; salary and expenses; removal.
9. Mine inspectors' examining board.
10. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; reports after fatal accidents.
11. Findings and orders of mine inspectors; special inspections; notice of findings and orders.
12. Review of findings and orders by director; special inspections; annulment, revision, etc., of order; notice.
13. Requirements for findings, orders and notices; offices and bulletin boards at mines; posting of findings or orders.
14. Coal mine safety board of review; creation; composition; appointment, term, oath and compensation of members; secretary; powers and duties generally.
15. Same; application for annulment or revision of finding or order; hearings; effect of filing application; temporary relief; evidence and burden of proof; findings and orders of board.
16. Same; review of other administrative action.
17. Judicial review of final orders of board.
18. Penalties.
19. Mine rescue stations; equipment.
20. Mine rescue crews.
21. Supervision of mine rescue work.
22. Provisions of article severable.

Section 1. *Definitions.*—Mine: In this chapter the term
2 “mine” shall include the shafts, slopes, drifts or inclines
3 connected with excavations penetrating coal seams or
4 strata, which excavations are ventilated by one general
5 air current or divisions thereof, and connected by one
6 general system of mine haulage over which coal may be
7 delivered to one or more points outside the mine, and
8 the surface structures or equipment connected therewith
9 which contribute directly or indirectly to the mining,
10 preparation or handling of coal.

11 Operator: The term “operator” shall mean any firm,
12 corporation, partnership or individual operating any coal
13 mine or part thereof.

14 Department: The term “department” shall mean the
15 state department of mines provided for in section two of
16 this article.

17 Director of the Department of Mines: The term “direc-
18 tor of the department of mines” shall mean the director

19 of the department of mines provided for in section three
20 of this article, and is synonymous with the term, "chief
21 of the department of mines."

22 Mine Inspector: The term "mine inspector" shall mean
23 a state mine inspector provided for in section seven of
24 this article.

25 Mine Inspectors' Examining Board: The term "mine
26 inspectors' examining board" shall mean the mine inspec-
27 tors' examining board provided for in section nine of this
28 article.

29 Coal Mine Safety Board of Review: The term "coal
30 mine safety board of review" shall mean the coal mine
31 safety board of review provided for in section fourteen
32 of this article.

33 Certified Person: The term "certified person", when
34 used to designate the kind of person to whom the per-
35 formance of a duty in connection with the operation of a
36 mine shall be assigned, shall mean a person who is quali-
37 fied under the provisions of this chapter to perform such
38 duty.

Sec. 2. *Department of Mines.*—There shall be a state
2 department of mines, which shall have for its purpose the
3 supervision of the execution and enforcement of the pro-
4 visions of this chapter, enacted for the protection of the
5 safety and health of persons employed within or at the
6 mines within this state, and for the protection and preser-
7 vation of mining property and property used in connection
8 therewith.

Sec. 3. *Director of the Department of Mines; Appoint-
2 ment; Term of Office.*—There shall be a director of the
3 department of mines, who shall be appointed by the gov-
4 ernor with the advice and consent of the senate and who
5 shall serve for a term of four years, subject to the pro-
6 visions of chapter six, article six, section four of this
7 code, as amended. The original term of the director of
8 the department of mines appointed under this section
9 shall commence as of the effective date of this article as
10 amended and all appointments to such office made there-

11 after shall be made for a full term of four years, except
12 that in case of a vacancy the appointment shall be made
13 for the unexpired term only.

Sec. 4. *Same; Powers and Duties.*—The director of the
2 department of mines shall have full charge of the depart-
3 ment. He shall have the power and duty to:

4 (1) Supervise and direct the execution and enforce-
5 ment of the provisions of this chapter;

6 (2) Appoint a deputy director of the department of
7 mines, fix his compensation and prescribe his powers and
8 duties;

9 (3) Employ such assistants, clerks, stenographers and
10 other employees as may be necessary and fix their com-
11 pensation, except as otherwise provided in this article;

12 (4) Employ mine inspectors and assign them to divi-
13 sions or districts in accordance with the provisions of sec-
14 tion seven of this article, and to supervise and direct such
15 mine inspectors in the performance of their duties;

16 (5) For good cause, to suspend any mine inspector
17 without compensation for a period not exceeding thirty
18 days in any calendar year;

19 (6) Prepare report forms to be used by mine in-
20 spectors in making their findings, orders and notices, upon
21 inspections made in accordance with this chapter;

22 (7) Hear and determine applications made by mine
23 operators for the annulment or revision of orders made
24 by mine inspectors, and to make inspections of mines, in
25 accordance with the provisions of this article;

26 (8) Cause a properly indexed permanent and public
27 record to be kept of all inspections made by himself or by
28 mine inspectors;

29 (9) Make annually a full and complete written report
30 of the administration of his department to the governor
31 of the state for the year ending the thirty-first day of
32 December. Such report shall include the number of visits
33 and inspections of mines in the state by mine inspectors,

34 the quantity of coal, coke and other minerals (including
35 oil and gas) produced in the state, the number of men
36 employed, number of mines in operation, statistics with
37 regard to health and safety of persons working in the
38 mines, improvements made, prosecutions, such other in-
39 formation in relation to the subject of mines, mine in-
40 spections and needed legislation as he may deem of public
41 interest and beneficial to the mining interest of the state.
42 Such reports shall be filed with the governor on or before
43 the thirtieth day of June next succeeding the year for
44 which it was made, and shall upon proper authority be
45 printed and distributed to interested persons;

46 (10) Conduct such research and studies as he shall
47 deem necessary to aid in protecting the health and safety
48 of persons employed within or at mines in this state, to
49 improve mining methods and to provide for the more
50 efficient protection and preservation of mines and prop-
51 erty used in connection therewith;

52 (11) Perform all other duties which are expressly im-
53 posed upon him by the provisions of this chapter.

54 All records of the department shall be open to the
55 public.

Sec. 5. *Same; Eligibility; Salary.*—The director of the
2 department of mines shall be a male citizen of West Vir-
3 ginia, shall be a competent person of good repute and tem-
4 perate habits and shall have had at least fifteen years' ex-
5 perience underground in coal mines, at least ten of which
6 shall have been underground in mines in this state. He
7 shall possess a practical knowledge of the different sys-
8 tems of working, ventilating and draining coal mines, and
9 a practical and scientific knowledge of all noxious and
10 dangerous gases found in such mines. A diploma in min-
11 ing engineering from the West Virginia university school
12 of mines, or any similarly accredited engineering school
13 shall be counted as two years' working experience. The
14 director shall devote all of his time to the duties of his
15 office, and shall not be directly or indirectly interested
16 financially in any mine in this state. The salary of the
17 director of the department of mines shall be twelve

18 thousand dollars per year, and traveling expenses, which
19 shall be paid out of the state treasury upon a requisition
20 upon the state auditor, properly certified by the director
21 of the department of mines.

2 Sec. 6. *Same; Oath; Bond.*—The director of the depart-
3 ment of mines shall, before entering upon the discharge of
4 his duties, take the oath of office prescribed by section five,
5 article four of the constitution, and shall execute a bond
6 in the penalty of two thousand dollars, with security to
7 be approved by the governor, conditioned upon the
8 faithful discharge of his duties, a certificate of which
9 oath and which bond shall be filed in the office of the
secretary of state.

2 Sec. 7. *Mine Inspectors; Districts and Divisions; Em-*
3 *ployment; Tenure; Oath; Bond.*—Notwithstanding any
4 other provisions of law, mine inspectors shall be selected,
5 serve and be removed as in this article provided.

5 The director of the department of mines shall divide
6 the state into not more than forty-five mining districts,
7 and not more than five mining divisions, so as to equalize,
8 as far as practical, the work of each inspector. He shall
9 assign inspectors to districts, designate and assign an
10 inspector at large for each such division and shall desig-
11 nate their places of abode, at points convenient to the
12 mines of their district or division.

13 Mine inspectors serving on the effective date of this
14 section, may continue to serve for a probationary period
15 not exceeding one year and shall be eligible to qualify
16 for appointment during such probationary period in
17 accordance with the provisions of section eight of this
18 article.

19 Except as in the next preceding paragraph provided, all
20 mine inspectors appointed after the mine inspectors'
21 examining board has certified to the director of the de-
22 partment of mines an adequate register of qualified eli-
23 gible candidates in accordance with section eight of this
24 article, so long as such register contains the names of at
25 least three qualified eligible candidates, shall be appointed

26 from the names on such register. Each original appoint-
27 ment shall be made by the director of the department of
28 mines for a probationary period of not more than one year.

29 The director of the department of mines shall make
30 each appointment from among the three qualified eligible
31 candidates on the register having the highest grades:
32 *Provided, however,* That the director of the department
33 of mines may, for good cause, at least thirty days prior
34 to making an appointment, strike any name from the
35 register. Upon striking any name from the register the
36 director of the department of mines shall immediately
37 notify in writing each member of the mine inspectors'
38 examining board of his action, together with a detailed
39 statement of the reasons therefor. Thereafter, the mine
40 inspectors' examining board, after hearing, if it finds
41 that the action of the director of the department of mines
42 was arbitrary or unreasonable, may order the name of
43 any candidate so stricken from the register to be rein-
44 stated thereon. Such reinstatement shall be effective from
45 the date of removal from the register.

46 Any candidate passed over for appointment for three
47 years shall be automatically stricken from the register.

48 After having served for a probationary period of one
49 year to the satisfaction of the director of the department
50 of mines, a mine inspector shall have permanent tenure
51 until he becomes sixty-five years of age, subject only to
52 dismissal for cause in accordance with the provisions of
53 section eight of this article. No mine inspector while in
54 office shall be directly or indirectly interested as owner,
55 lessor, operator, stockholder, superintendent or engineer
56 of any coal mine. Before entering upon the discharge of his
57 duties as a mine inspector, he shall take the oath of office
58 prescribed by the constitution, and shall execute a bond
59 in the penalty of two thousand dollars, with security to
60 be approved by the director of the department of mines,
61 conditioned upon the faithful discharge of his duties, a
62 certificate of which oath and bond shall be filed in the
63 office of the secretary of state.

Sec. 8. *Same; Eligibility for Appointment; Qualifications; Salary and Expenses; Removal.*—(a) No person shall be eligible for appointment as a mine inspector after the effective date of this article unless, at the time of his probationary appointment he: (1) Is a citizen of West Virginia, in good health, not less than thirty nor more than fifty-five years of age, and of good character, reputation and temperate habits; (2) has had at least ten years' practical experience in coal mining, at least five years of which, immediately preceding his original appointment, shall have been in mines in this state: *Provided, however,* That graduation from the school of mines of West Virginia university or any other accredited college of mining engineering shall be considered the equivalent of two years' practical experience; (3) has had practical experience with dangerous gases found in coal mines; and (4) has a good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as a mine inspector an eligible applicant shall submit to a written and oral examination by the mine inspectors' examining board and furnish such evidence of good health, character and other facts establishing eligibility as the board may require. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment and (2) has passed all written and oral examinations, with a grade of at least ninety percent, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the director of the department of mines. No candidate's name shall remain in the register for more than three years without requalifying.

(c) Salaries of mine inspectors shall not be less than seven thousand two hundred dollars per annum, nor more than eight thousand four hundred dollars per annum, and reasonable traveling expenses. Within the limits provided by law, the salary of each inspector shall be fixed by the director of the department of mines, subject to the approval of the mine inspectors' examining board. In

41 fixing salaries of mine inspectors, the director of the de-
42 partment of mines shall consider ability, performance of
43 duty, responsibility and experience. No reimbursement
44 for traveling expenses shall be made except upon an item-
45 ized account of such expenses submitted by the inspector,
46 who shall verify, upon oath, that such expenses were
47 actually incurred in the discharge of his official duties.

48 (d) A mine inspector, after having received a perma-
49 nent appointment shall be removed from office only for
50 physical or mental impairment, incompetency, neglect of
51 duty, drunkenness, malfeasance in office, or other good
52 cause.

53 Proceedings for the removal of a mine inspector may
54 be initiated by the director of the department of mines
55 whenever he has reasonable cause to believe and does
56 believe that adequate cause exists, warranting removal.
57 Such a proceeding shall be initiated by a verified petition,
58 filed with the board by the director of the department of
59 mines, setting forth with particularity the facts alleged.
60 Not less than twenty reputable citizens, who are operators
61 or employees in mines in the state, may petition the
62 director of the department of mines for the removal of a
63 mine inspector. If such petition is verified by at least
64 one of the petitioners, based on actual knowledge of the
65 affiant, and alleges facts which, if true, warrant the re-
66 moval of the inspector, the director of the department of
67 mines shall cause an investigation of the facts to be made.
68 If, after such investigation, the director finds that there
69 is substantial evidence which, if true, warrants removal
70 of the inspector, he shall file a petition with the board
71 requesting removal of the inspector.

72 On receipt of a petition by the director of the depart-
73 ment of mines seeking removal of a mine inspector the
74 board shall promptly notify the inspector to appear before
75 it at a time and place designated in said notice, which
76 time shall be not less than fifteen days thereafter. There
77 shall be attached to the copy of the notice served upon
78 the inspector a copy of the petition filed with the board.

79 At the time and place designated in said notice, the

80 board shall hear all evidence offered in support of the
81 petition and on behalf of the inspector. Each witness
82 shall be sworn and a transcript shall be made of all evi-
83 dence taken and proceedings had at any such hearing.
84 No continuance shall be granted except for good cause
85 shown.

86 The chairman of the board and the director of the
87 department of mines shall have power to administer oaths
88 and subpoena witnesses.

89 Any mine inspector who shall wilfully refuse or fail
90 to appear before the board, or having appeared, shall
91 refuse to answer under oath any relevant question on
92 the ground that his testimony or answer might incrimi-
93 nate him, or shall refuse to waive immunity from prose-
94 cution on account of any relevant matter about which he
95 may be asked to testify at any such hearing before the
96 board, shall forfeit his position.

97 If, after hearing, the board finds that the inspector
98 should be removed, it shall enter an order to that effect.
99 The decision of the board shall be final and shall not be
100 subject to judicial review.

Sec. 9. *Mine Inspectors' Examining Board.*—There shall
2 be a mine inspectors' examining board consisting of five
3 members who, except for the public representative on
4 such board, shall be appointed by the governor, by and
5 with the advice and consent of the senate. Members so
6 appointed may be removed only for the same causes and
7 in like manner as elective state officers. One of the mem-
8 bers of the board shall be a representative of the public
9 who shall be the director of the school of mines at West
10 Virginia university. Two members of the board shall be
11 persons who by reason of previous training and experi-
12 ence may reasonably be said to represent the viewpoint
13 of coal mine operators and two members shall be persons
14 who by reason of previous training and experience may
15 reasonably be said to represent the viewpoint of coal mine
16 workers.

17 The director of the department of mines shall be an
18 ex officio member of the board, and shall serve as secre-

19 tary of the board without additional compensation, but he
20 shall have no right to vote with respect to any matter
21 before the board.

22 The members of the board, except the public representa-
23 tive, shall be appointed for overlapping terms of eight
24 years, except that the original appointments shall be for
25 terms of two, four, six and eight years, respectively. Any
26 member whose term expires may be reappointed by the
27 governor.

28 Each member of the board shall receive forty dollars
29 per diem while actually engaged in the performance of
30 the work of the board; and shall receive mileage at the
31 rate of ten cents for each mile actually traveled going
32 from the home of the member to the place of the meeting
33 of the board and returning therefrom, which shall be paid
34 out of the state treasury upon a requisition upon the state
35 auditor, properly certified by such members of the board.

36 The public member shall serve as chairman of the
37 board. Members of the board, before performing any duty
38 shall take and subscribe to the oath required by article
39 four, section five of the constitution of West Virginia.

40 The mine inspectors' examining board shall meet at
41 such times and places as shall be designated by the chair-
42 man. It shall be the duty of the chairman to call a meet-
43 ing of the board on the written request of three members
44 or the director of the department of mines. Notice of each
45 meeting shall be given in writing to each member by the
46 secretary at least five days in advance of the meeting.
47 Three members shall constitute a quorum for the trans-
48 action of business.

49 In addition to other duties expressly set forth elsewhere
50 in this article, the board shall:

51 (1) Establish, and from time to time revise, forms of
52 application for employment as mine inspector and forms
53 for written examinations to test the qualification of candi-
54 dates for that position;

55 (2) Adopt and promulgate reasonable rules and regu-
56 lations relating to the examination, qualification and cer-

57 tification of candidates for appointment as mine inspectors,
58 and hearings for removal of inspectors, required to be
59 held by this article. All of such rules and regulations
60 shall be printed and a copy thereof furnished by the secre-
61 tary of the board to any person upon request;

62 (3) Conduct, after public notice of the time and place
63 thereof, examinations of candidates for appointment as
64 mine inspector. By unanimous agreement of all members
65 of the board, one or more members of the board or an
66 employee of the department of mines may be designated
67 to give to a candidate the written portion of the examina-
68 tion;

69 (4) Prepare and certify to the director of the depart-
70 ment of mines a register of qualified eligible candidates
71 for appointment as mine inspectors. The register shall
72 list all qualified eligible candidates in the order of their
73 grades, the candidate with the highest grade appearing at
74 the top of the list. After each meeting of the board held
75 to examine such candidates, and at least annually, the
76 board shall prepare and submit to the director of the de-
77 partment of mines a revised and corrected register of
78 qualified eligible candidates for appointment as mine in-
79 spector, deleting from such revised register all persons
80 (a) who are no longer residents of West Virginia, (b)
81 who have allowed a calendar year to expire without, in
82 writing, indicating their continued availability for such
83 appointment, (c) who have been passed over for appoint-
84 ment for three years, (d) who have become ineligible for
85 appointment since the board originally certified that such
86 person was qualified and eligible for appointment as mine
87 inspector, or (e) who, in the judgment of at least four
88 members of the board, should be removed from the reg-
89 ister for good cause;

90 (5) Cause the secretary of the board to keep and pre-
91 serve the written examination papers, manuscripts, grad-
92 ing sheets and other papers of all applicants for appoint-
93 ment as mine inspector, together with the correct solu-
94 tion of each question prepared by the examining board
95 and the stenographer's transcript of the oral examinations
96 of such applicants;

97 (6) Issue a certificate of qualification to each success-
98 ful, eligible candidate;

99 (7) Hear and determine proceedings for the removal
100 of mine inspectors in accordance with the provisions of
101 this article;

102 (8) Hear and determine appeals of mine inspectors
103 from suspension orders made by the director pursuant
104 to the provisions of section four (5) of this article: *Pro-*
105 *vided, however,* That an aggrieved inspector in order to
106 appeal from any order of suspension, shall file such appeal
107 in writing with the mine inspectors' examining board not
108 later than ten days after receipt of notice of suspension.
109 On such appeal the board shall affirm the action of the
110 director unless it be satisfied from a clear preponderance
111 of the evidence that the director has acted arbitrarily;

112 (9) Make an annual report to the governor and the
113 director of the department of mines concerning the ad-
114 ministration of mine inspection personnel in the state
115 service, making such recommendations as the board con-
116 siders to be in the public interest.

Sec. 10. *Director and Inspectors Authorized to Enter*
2 *Mines; Duties of Inspectors to Examine Mines; Reports*
3 *After Fatal Accidents.*—The director of the department of
4 mines shall have authority to visit, enter and examine any
5 mine, whether underground or on the surface, and may
6 call for the assistance of any district mine inspector or in-
7 spectors wherever such assistance is necessary in the ex-
8 amination of any mine. The operator of every coal mine
9 shall furnish the director of the department of mines or
10 mine inspector proper facilities for entering such mine
11 and making examination or obtaining information.

12 Mine inspectors shall devote their full time and un-
13 divided attention to the performance of their duties, and
14 they shall examine all of the mines in their respective
15 districts at least once in every four months, and as often,
16 in addition thereto, as the director of the department of
17 mines may direct or the necessities of the case or the con-
18 dition of the mine or mines may require, and shall make
19 a personal examination of each working face, and also

20 entrances to abandoned parts of the mine where gas is
21 known to liberate, for the purpose of determining whether
22 a danger described in section eleven of this article exists
23 in any such mine, or whether any provision of article two
24 of this chapter is being violated in any such mine, or
25 whether any such mine is a gassy mine.

26 The mine inspector shall visit the scene of each fatal
27 accident occurring in any mine within his district, and
28 shall make an examination into the particular facts of
29 such accident and make a report to the director of the
30 department of mines, setting forth the results of such
31 examination including the condition of the mine and the
32 cause or causes of such fatal accident, if known, and all
33 such reports shall be made available to the interested
34 parties, upon written requests.

Sec. 11. *Findings and Orders of Mine Inspectors; Special*
2 *Inspectors; Notice of Findings and Orders.*—(a) If a mine
3 inspector, upon making an inspection of a mine as author-
4 ized by this article, finds danger that a mine explosion,
5 mine fire, mine inundation, man-trip or man-hoist acci-
6 dent will occur immediately or before the imminence of
7 such danger can be eliminated, he shall also find the ex-
8 tent of the area of such mine throughout which such
9 danger exists. Thereupon he shall immediately make an
10 order requiring the operator of such mine to cause all
11 persons, excepting persons referred to in subsection (e)
12 of this section, to be withdrawn from, and to be debarred
13 from entering such area. Such findings and order shall
14 contain a detailed description of the conditions which
15 the mine inspector finds cause and constitute such danger,
16 and a description of the area of such mine throughout
17 which persons must be withdrawn and debarred. Upon
18 the written statement of the operator that such danger
19 has been removed, such inspector shall make another
20 inspection and shall make an order withdrawing or con-
21 tinuing the requirements of such previous order.

22 (b) If a mine inspector, upon making an inspection of
23 a mine as authorized by this article, finds that any pro-
24 vision of article two of this chapter is being violated, but
25 that the conditions created by such violation do not cause

26 danger that a mine explosion, mine fire, mine inundation,
27 man-trip or man-hoist accident will occur in such mine
28 immediately or before the imminence of such danger
29 can be eliminated, he shall find what would be a reason-
30 able period of time within which such violation should be
31 totally abated. Such findings shall contain reference to
32 the provisions of article two of this chapter which he
33 finds are being violated, and a detailed description of the
34 conditions which cause and constitute such violation.

35 (c) The period of time so found by such mine inspector
36 to be a reasonable period of time may be extended by such
37 inspector, or by any other mine inspector duly authorized
38 by the director of the department of mines, from time to
39 time, but on not more than three occasions, upon the mak-
40 ing of a special inspection to ascertain whether or not such
41 violation has been totally abated. The director of the de-
42 partment of mines shall cause a special inspection to be
43 made: (A) Upon expiration of such period of time as origi-
44 nally fixed or as extended, unless the director is satisfied
45 that the violation has been abated; and (B) whenever an
46 operator of a mine, prior to the expiration of any such
47 period of time, requests him to cause a special inspection
48 to be made at such mine. Upon making such a special in-
49 spection, such mine inspector shall find whether or not
50 such violation has been totally abated. If he finds that
51 such violation has not been totally abated, he shall find
52 whether or not such period of time as originally fixed, or
53 as so fixed and extended, should be extended. If he finds
54 that such period of time should be extended, he shall find
55 what a reasonable extension would be. If he finds that
56 such violation has not been totally abated, and if such
57 period of time, as originally fixed, or as so fixed and ex-
58 tended, has then expired, and if he also finds that such
59 period of time should not be further extended, he shall
60 also find the extent of the area of such mine which is
61 affected by such violation. Thereupon, he shall make an
62 order requiring the operator of such mine to cause all per-
63 sons in such area, excepting persons referred to in sub-
64 section (e) of this section, to be withdrawn from, and to
65 be debarred from entering such area. Such findings and
66 order shall contain reference to the specific provisions of

67 article two of this chapter which are being violated and
68 a detailed description of the area of such mine through-
69 out which persons must be withdrawn and debarred.

70 (d) If a mine inspector, upon making an inspection
71 of a mine as authorized by this article, finds that methane
72 has been ignited in said mine, or has been detected with
73 a permissible flame safety lamp, or by laboratory analysis
74 of a sample of air collected in active workings, in an air
75 current perceptible by smoke tube or other visible means,
76 taken not less than twelve inches from the roof, face
77 and rib, in an amount of twenty-five hundredths per
78 cent or more, he shall enter an order classifying the
79 mine as a gassy mine.

80 (e) No order issued under this section shall require
81 any of the following persons to be withdrawn from, or to
82 be debarred from entering, the area described in the
83 order: (A) Any person whose presence in such area is
84 necessary, in the judgment of the operator of the mine,
85 to eliminate the danger described in an order or to abate
86 the violation described in an order; (B) the director of
87 the department of mines or any mine inspector whose
88 official duties require him to enter such area; or (C) any
89 technical consultant, or any authorized representative of
90 the employees of the mine, who is himself an employee
91 of the mine or, if not an employee of the mine, who as-
92 sumes all risks to which he may be subject while in or
93 around the mine, who is a certified person qualified to
94 make mine examinations, or is accompanied by such a
95 person, and whose presence in the area is necessary for
96 the proper investigation of the conditions described in
97 the order.

98 (f) Notice of each finding and order made under this
99 section shall promptly be given to the operator of the
100 mine to which it pertains, by the person making such
101 finding or order.

102 (g) No order shall be issued under the authority of
103 this section which is not expressly authorized herein.

Sec. 12. *Review of Findings and Orders by Director;
2 Special Inspections; Annulment, Revision, etc., of Order;*

3 Notice.—Any operator notified of findings or an order
4 made by a mine inspector pursuant to section eleven of
5 this article, may apply to the director of the department
6 of mines for annulment or revision of such order. Upon
7 receipt of such application the director of the department
8 of mines shall make a special inspection of the mine
9 affected by such order, or cause two duly authorized mine
10 inspectors, other than the mine inspector who made such
11 order, to make such inspection of such mine and to report
12 thereon to him. Upon making such special inspection
13 himself, or upon receiving the report of such inspection
14 made by such mine inspectors, the director of the depart-
15 ment of mines shall make an order which shall include his
16 findings and shall annul, revise or affirm the order of
17 the inspector.

18 The director of the department of mines shall cause
19 notice of each finding and order made under this section
20 to be given promptly to the operator of the mine to which
21 it pertains.

22 At any time while an order made pursuant to section
23 eleven, or this section, of this article, is in effect, the
24 operator of the mine affected by such order may apply to
25 the director of the department of mines for annulment
26 or revision of such order. The director of the department
27 of mines shall thereupon proceed to act upon such ap-
28 plication in the manner provided in this section.

29 In the view of the urgent need for prompt decision of
30 matters submitted to the director of the department of
31 mines under this section, all actions which he, or mine
32 inspectors designated by him, are required to take under
33 this section shall be taken as rapidly as practicable, con-
34 sistent with adequate consideration of the issues involved.

Sec. 13. *Requirements for Findings, Orders and Notices;
2 Offices and Bulletin Boards at Mines; Posting of Findings
3 or Orders.*—(a) All findings and orders made pursuant to
4 sections eleven or twelve of this article and all notices
5 required to be given of the making of such findings and
6 orders, shall be in writing. All such findings and orders
7 shall be signed by the person making them, and all such

8 notices shall be signed by the person charged with the
9 duty of giving the notice. All such notices shall contain a
10 copy of the findings and orders referred to therein.

11 (b) Each operator of a mine shall maintain an office on
12 or near the premises of such mine and shall maintain
13 thereon a conspicuous sign designating it as the office of
14 such mine. Each operator of a mine shall maintain a
15 bulletin board at such office or at some conspicuous place
16 near the entrance of such mine, in such manner that
17 notices required by law to be posted on the mine bulletin
18 board may be posted thereon, be easily visible to all
19 persons desiring to read them, and be protected against
20 damage by weather and against unauthorized removal.
21 The operator shall maintain on such bulletin board a
22 conspicuous sign designating it as the bulletin board of
23 such mine. Notice of any finding or order required by sec-
24 tions eleven or twelve of this article to be given to an
25 operator shall be given by causing such notice, addressed
26 to the operator of the mine to which it pertains, to be
27 delivered to the office of such mine provided for in this
28 subsection; and by causing a copy of such notice to be
29 posted on the bulletin board of such mine provided for in
30 this subsection. The requirement of the preceding sec-
31 tions that a notice shall be "addressed to the operator of
32 the mine to which it pertains," shall not require that the
33 name of the operator for whom it is intended shall be spe-
34 cifically set out in such address. Addressing such notice
35 to "Operator of Mine," specifying
36 the mine sufficiently to identify it, shall satisfy such
37 requirement.

38 (c) The director of the department of mines shall
39 cause a copy of such notice to be mailed immediately to
40 a designated representative of the employees of the mine
41 to which it pertains.

Sec. 14. *Coal Mine Safety Board of Review; Creation;
2 Composition; Appointment, Term, Oath and Compensa-
3 tion of Members; Secretary; Powers and Duties Gen-
4 erally.*—(a) There is hereby created a board to be known
5 as the coal mine safety board of review, which shall be
6 composed of five members who, except for the public

7 representative, shall be appointed by the governor, by
8 and with the advice and consent of the senate. Members
9 so appointed may be removed only for the same causes
10 and in like manner as elective state officials. One of the
11 members of the board shall be the public representative
12 who shall be the director of the school of mines at West
13 Virginia university. Two members of the board shall be
14 persons who by reason of previous training and experi-
15 ence may reasonably be said to represent the viewpoint
16 of coal mine operators and two members shall be persons
17 who by reason of previous training and experience may
18 reasonably be said to represent the viewpoint of coal mine
19 workers.

20 (b) The members of the board, except the public
21 representative, shall be appointed for terms of four years,
22 and any member whose term expires may be reappointed
23 by the governor.

24 (c) Each member of the board shall receive forty
25 dollars per diem while actually engaged in the perform-
26 ance of the work of the board; and shall receive mileage
27 at the rate of ten cents for each mile actually traveled
28 going from the home of the member to the place of
29 meeting of the board and returning therefrom.

30 (d) The board after being duly organized shall take
31 and subscribe to, before any official authorized to admin-
32 ister the same, the oath prescribed by section five of
33 article four of the constitution of West Virginia.

34 (e) The board shall employ and prescribe the duties
35 of a secretary of the board and such other office or clerical
36 assistance as it deems necessary. Every official act of the
37 board shall be entered of record, and its hearings and
38 records shall be open to the public.

39 (f) The mine safety board of review shall hear and
40 determine applications filed pursuant to section fifteen of
41 this article, for annulment or revision of findings or orders
42 made pursuant to sections eleven or twelve of this article,
43 and shall hear and determine applications filed pursuant
44 to section sixteen of this article. The board shall not
45 make or cause to be made any inspection of a mine for
46 the purpose of determining any pending application.

47 (g) The board is authorized to make such rules as
48 are necessary for the orderly transaction of its proceed-
49 ings, which shall include requirement for adequate notice
50 of hearing to all parties.

51 (h) Any member of the board may sign and issue
52 subpoenas for the attendance and testimony of witnesses
53 and the production of relevant papers, books and docu-
54 ments, and administer oaths. Witnesses summoned be-
55 fore the board shall be paid the same fees and mileage
56 that are paid witnesses in the circuit courts of the state.

57 (i) The board may order testimony to be taken by
58 deposition in any proceeding pending before it, at any
59 stage of such proceeding. Reasonable notice must first be
60 given in writing by the party or his attorney proposing
61 to take such deposition to the opposite party or his at-
62 torney of record, which notice shall state the name of
63 the witness and the time and place of the taking of his
64 deposition. Any person may be compelled to appear and
65 depose, and to produce books, papers or documents, in
66 the same manner as witnesses may be compelled to appear
67 and testify and produce like documentary evidence before
68 the board, as provided in subsection (h) of this section.
69 Witnesses whose depositions are taken under this sub-
70 section shall be entitled to the same fees as are paid for
71 like services in the circuit courts of the state.

72 (j) In case of contumacy by, or refusal to obey a sub-
73 poena served upon, any person under this section, the
74 circuit court of any county in which such person is found
75 or resides or transacts business, upon proper application
76 thereto, and after notice to such person and hearing,
77 shall have jurisdiction to issue an order requiring such
78 person to appear and give testimony before the board
79 or to appear and produce documents before the board, or
80 both; and any failure to obey such order of the court may
81 be punished by such court as a contempt thereof.

Sec. 15. *Same; Application for Annulment or Revision
2 of Finding or Order; Hearings; Effect of Filing Applica-
3 tion; Temporary Relief; Evidence and Burden of Proof;
4 Findings and Orders of Board.*—(a) Any operator notified
5 of an order or finding made pursuant to section eleven

6 of this article, may apply to the coal mine safety board
7 of review for annulment or revision of such finding or
8 order without seeking its annulment or revision under
9 section twelve of this article; and any operator notified
10 of an order made pursuant to section twelve of this article
11 may apply to the board for annulment or revision of such
12 order: *Provided, however,* That any such application shall
13 be filed with the board not later than thirty days after
14 the receipt of notice of such order or finding.

15 (b) The operator shall be designated as the applicant
16 in such proceedings and the application filed by him shall
17 recite the order complained of and other facts sufficient
18 to advise the board of the nature of the proceeding. He
19 may allege in such application: That danger as set out
20 in such order does not exist at the time of the filing of such
21 application; that violation of the provisions of article
22 two of this chapter as set out in such finding or order,
23 has not occurred; that such violation has been totally or
24 partially abated; that the period of time within which
25 such violation should be totally abated, as fixed in the
26 findings upon which such order was based, was not rea-
27 sonable; that the area of the mine described in such order
28 as the area affected by the violation referred to in such
29 order is not so affected at the time of the filing of such
30 application; or that the mine described in such order is
31 not a gassy mine. The director of the department of mines
32 shall be the respondent in such proceeding, and the ap-
33 plicant shall send a copy of such application by registered
34 mail to the director of the department of mines.

35 (c) Immediately upon the filing of such an application
36 the board shall fix the time for a prompt hearing thereof.

37 (d) An application for annulment or revision of a
38 finding or order filed in accordance with the provisions
39 of this section shall act as a supersedeas of such finding
40 or order, unless such finding or order is entered pursuant
41 to the provisions of section eleven (a).

42 Pending final hearing on an application to annul or
43 revise a finding or order entered pursuant to the pro-
44 visions of section eleven (a), the applicant may file
45 with the board a written request for temporary relief

46 from such finding or order, and upon a showing of good
47 cause temporary relief may be granted.

48 (e) The board shall not be bound by any previous
49 findings of fact by the respondent or by any mine inspec-
50 tor, or by any other representative of the department of
51 mines. Evidence relating to the making of the order
52 complained of and relating to the questions raised by the
53 allegations of the pleadings or other questions pertinent
54 in the proceeding may be offered by both parties to the
55 proceeding. If the respondent claims that danger or a
56 violation of article two of this chapter, as set out in such
57 order, existed at the time of the filing of the application,
58 or that gas has been ignited or found in such mine as set
59 out in the order under review, the burden of proving the
60 then existence of such danger or violation, or that gas
61 has been ignited or found in such mine as set out in the
62 order under review, shall be upon the respondent, and
63 the respondent shall present his evidence first to prove
64 the then existence of such danger or violation. Following
65 presentation of respondent's evidence the applicant may
66 present his evidence, and thereupon respondent may pre-
67 sent evidence to rebut the applicant's evidence.

68 (f) After the conclusion of such hearing the board
69 shall make its findings and shall enter an order annulling,
70 revising or affirming the finding or order under review.

71 (g) Each finding and order made by the board shall
72 be in writing. It shall show the date on which it is made,
73 and shall bear the signatures of the members of the board
74 who concur therein. Upon making a finding and order
75 the board shall cause a true copy thereof to be sent by
76 registered mail to all parties or their attorneys of record.
77 The board shall cause each such finding and order to be
78 entered on its official record, together with any written
79 opinion prepared by any member in support of, or dis-
80 senting from, any such finding or order.

81 (h) In view of the urgent need for prompt decision
82 of matters submitted to the board under this section, all
83 actions which the board is required to take under this
84 section shall be taken as rapidly as practicable, consistent
85 with adequate consideration of the issues involved.

Sec. 16. *Same; Review of Other Administrative Action.*

2 — (a) Any operator aggrieved by any action or ruling of
3 the director of the department of mines or any mine in-
4 spector, or other authorized representative of the depart-
5 ment of mines, pursuant to any provision of article two of
6 this chapter, which action or ruling is not reviewable
7 under section fifteen of this article, may apply to the coal
8 mine safety board of review for annulment, correction or
9 revision of such action or ruling: *Provided, however,* That
10 an operator applying to the board for annulment, correc-
11 tion or revision of such action or ruling, not reviewable
12 under section fifteen of this article, shall file such appli-
13 cation with the board not later than thirty days after
14 receiving notice of such action or ruling.

15 (b) Upon the filing of such an application the board
16 shall proceed to hear and determine the matter in accord-
17 ance with the procedure set forth in section fifteen of
18 this article, insofar as the same may be applicable, and
19 shall thereupon make such findings as may be appro-
20 priate, and enter an order, consistent with such findings,
21 affirming, annulling, correcting or revising the action or
22 ruling under review.

Sec. 17. *Judicial Review of Final Orders of Board.*— (a)

2 Any final order issued by the board under sections fifteen
3 or sixteen of this article shall be subject to judicial review
4 by the circuit court of the county in which the mine
5 affected is located or the circuit court of Kanawha county
6 upon the filing in such court or with the judge thereof
7 in vacation, of a petition for appeal by the director of
8 the department of mines or the operator aggrieved by
9 such final order, within thirty days from the date of the
10 making of such final order.

11 (b) The party making such appeal shall forthwith
12 send a copy of such petition for appeal, by registered
13 mail, to the other party and to the board. Upon receipt
14 of such copy of such petition for appeal the board shall
15 promptly certify and file in such court a complete tran-
16 script of the record upon which the order complained of
17 was made. The costs of such transcripts shall be paid by
18 the party making the appeal.

19 (c) The court, or judge thereof in vacation, shall hear
20 such appeal on the record made before the board, and
21 shall permit argument, oral or written or both, by both
22 parties. The court shall permit such pleadings, in addition
23 to the pleadings before the board, as it deems to be re-
24 quired.

25 (d) Upon such conditions as may be required and to
26 the extent necessary to prevent irreparable injury, any
27 circuit court to which an appeal has been made as pro-
28 vided in subsection (c) of this section, may, after due
29 notice to and hearing of the parties to the appeal, issue all
30 necessary and appropriate process to postpone the effec-
31 tive date of the final order of the board or to grant such
32 other relief as may be appropriate pending final determi-
33 nation.

34 (e) A circuit court to which an appeal has been made
35 as provided in subsection (c) of this section, may affirm,
36 annul, or revise the final order of the board, or it may
37 remand the proceeding to the board for such further
38 action as it directs.

39 (f) The decision of a circuit court on an appeal from
40 the board shall be final, subject only to review by the
41 supreme court of appeals of West Virginia upon a petition
42 for certiorari filed in such court within sixty days from
43 the entry of the order and decision of the circuit court
44 upon such appeal from the board.

Sec. 18. *Penalties.*—Any person who has notice of a
2 valid order made pursuant to sections eleven or twelve
3 of this article, who wilfully disobeys or fails to comply
4 with such order, or who interferes with the director of
5 the department of mines or a mine inspector in the dis-
6 charge of duties hereunder, shall be guilty of a misde-
7 meanor and upon conviction thereof shall be fined not
8 less than ten nor more than five hundred dollars.

Sec. 19. *Mine Rescue Stations; Equipment.*—The direc-
2 tor of the state department of mines is hereby authorized
3 to purchase, equip and operate for the use of said depart-
4 ment such mine rescue stations and equipment as he may
5 deem necessary.

2 **Sec. 20. *Mine Rescue Crews.***—The director of the state
 3 department of mines is hereby authorized to have trained
 4 and employed at the rescue stations operated by that
 5 department within the state, such rescue crews as he may
 6 deem necessary. Each member of a rescue crew shall
 7 devote four hours each month for training purposes, and
 8 shall be available at all times to assist in rescue work at
 9 explosions and mine fires. Regular members shall receive
 10 for such services the sum of seven dollars per month and
 11 captains shall receive eight dollars per month, payable
 12 on requisition approved by the director of the department
 13 of mines, and such other sums, to be paid by the operat-
 14 ing company, as may be agreed upon when engaged in
 15 rescue work at explosions or mine fires. The director of
 16 the department of mines may remove any member of a
 rescue crew at any time.

2 **Sec. 21. *Supervision of Mine Rescue Work.***—The direc-
 3 tor of the department of mines is hereby authorized to
 4 assign mine rescue teams and such mine rescue and re-
 5 covery work to inspectors or other qualified employees
 6 of the department of mines as he may deem necessary.

2 **Sec. 22. *Provisions of Article Severable.***—The various
 3 provisions of this article shall be construed as separable
 4 and severable, and should any of the provisions, sentences,
 5 clauses, or parts thereof be construed or held unconstitu-
 6 tional or for any reason be invalid, the remaining pro-
 visions of this article shall not be thereby affected.

Article 2. Coal Mines.

Section

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4. Fans.
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8. Mine foreman; when to be employed; qualifications; assistants.

9. Same; duties, ventilation; loose coal, slate or rock; props; drainage of water.
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11. Same; signals on haulways; lights at mouth and bottom of shaft; operation of cages.
12. Same; boreholes.
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19. Same; duty to notify operator when unable to comply with law; duty of operator.
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24. Unlawful to enter mine until fire boss reports it safe; exceptions.
25. Authority of fire boss to perform other duties.

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26. Control of coal dust; rock dusting.

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27. Instruction of workmen as to testing; examination of working area; correcting dangerous conditions.
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29. Authorized explosives.
30. Surface magazines for explosives.
31. Transportation of explosives.
32. Underground storage of explosives.
33. Preparation of shots; blasting practices.
34. Misfires of explosives.
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36. Hoisting machinery; telephones and safety devices; hoisting engineers and drum runners.

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37. Haulage; equipment; practices.
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47. Responsibility for care and maintenance of face equipment.
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49. Safeguards for mechanical equipment.

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54. Duties of persons subject to article; rules and regulations of operators.
55. Protective clothing.
56. Checking systems.
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58. Fire protection.
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63. Survey on closing of mines.
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69. Weighing and measuring coal; appliances; testing correctness thereof.
70. Marking and weighing cars used in hauling coal.
71. Weighing coal before screening; payment for coal.
72. Weighman; checkweighman; employment; oath.

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73. Reopening old or abandoned mine.
74. Annual report by operator of mine; owner's report in case of sale.
75. Examinations to determine compliance with permits.
76. Compliance with article suspended where required equipment unobtainable; allowance for planning and instituting changes.
77. Intimidation of workmen.
78. Penalties.
79. Provisions of article severable.

Section 1. *Definitions.*—Mine: In this article the term
 2 “mine” shall include the shafts, slopes, drifts or inclines
 3 connected with excavations penetrating coal seams or
 4 strata, which excavations are ventilated by one general
 5 air current or divisions thereof, and connected by one
 6 general system of mine haulage over which coal may be
 7 delivered to one or more points outside the mine, and the
 8 surface structures or equipment connected therewith
 9 which contribute directly or indirectly to the mining,
 10 preparation or handling of coal.

11 Excavations and Workings: The term "excavations and
12 workings" shall mean any or all parts of a mine exca-
13 vated or being excavated, including shafts, slopes, drifts,
14 tunnels, entries, rooms, and working places, whether
15 abandoned or in use.

16 Shaft: The term "shaft" shall mean a vertical opening
17 through the strata that is or may be used for purposes
18 of ventilation, drainage, and the hoisting and transporta-
19 tion of men and material, in connection with the mining
20 of coal.

21 Slope: The term "slope" shall mean a plane or incline
22 roadway, usually driven to a coal seam from the surface
23 and used for the same purposes as a shaft.

24 Drift: The term "drift" shall mean a horizontal or ap-
25 proximately horizontal opening through strata or in a
26 coal seam and used for the same purpose as a shaft.

27 Operator: The term "operator" shall mean any firm,
28 corporation, partnership or individual operating any coal
29 mine or part thereof.

30 Superintendent: The term "superintendent" shall mean
31 the person who shall have, on behalf of the operator,
32 immediate supervision of one or more mines.

33 Mine Foreman: The term "mine foreman" shall mean
34 the person charged with the responsibility of the general
35 supervision of the underground workings of a mine and
36 the persons employed therein. He shall hold a certificate
37 of competency for such position issued to him by the
38 department of mines after taking an examination held by
39 the department of mines.

40 Assistant Mine Foreman: The term "assistant mine
41 foreman" shall mean a person designated to assist the
42 mine foreman in the supervision of a portion or the whole
43 of a mine or of the persons employed therein.

44 Supervisor: The term "supervisor" shall mean a super-
45 intendent, mine foreman, assistant mine foreman, or any
46 person specifically designated by the superintendent or
47 mine foreman to supervise work or employees and who

48 is acting pursuant to such specific designation and in-
49 structions.

50 Fire Boss: The term "fire boss" shall mean any person
51 designated to examine a mine for gas and other dangers.
52 Such person shall have the qualifications required by this
53 article.

54 Shot Firer: The term "shot firer" shall mean any com-
55 petent person having had at least three years' practical
56 experience in coal mines; who has a knowledge of ventila-
57 tion, mine roof and timbering; and who has demonstrated
58 knowledge of mine gases and the use of a flame safety
59 lamp, by examination given him by the mine foreman.

60 Approved: The term "approved" shall mean any equip-
61 ment, device, or explosive, approved by the director of
62 the department of mines.

63 Permissible: The term "permissible" shall mean any
64 equipment, device, or explosive, that has been approved as
65 permissible by the United States bureau of mines, and
66 meets all requirements, restrictions, exceptions, limita-
67 tions and conditions attached to such classification by said
68 bureau.

69 Nongassy Mine: The term "nongassy mine" shall mean
70 any coal mine which is not classified as gassy.

71 Gassy Mine: The term "gassy mine" shall mean any
72 mine in which methane has been ignited, or has been
73 detected with a permissible flame safety lamp, or by
74 laboratory analysis of an air sample collected in active
75 workings, in a perceptible air current, taken not less than
76 twelve inches from the roof, face and rib, in an amount
77 of twenty-five hundredths per cent or more.

78 Interested Persons: The term "interested persons" shall
79 include the operator, members of any mine safety com-
80 mittee at the mine affected and other duly authorized
81 representatives of the mine workers, and state mine in-
82 spectors.

83 Abandoned Workings: The term "abandoned work-
84 ings" shall mean excavations, either caved or sealed, that

85 are deserted and in which further mining is not intended,
86 and open workings which are ventilated and not inspected
87 regularly.

MINE MAPS

2 Sec. 2. *Mine Maps; Certificate of Engineer.*—The oper-
3 ator of every coal mine shall make, or cause to be made,
4 an accurate map or plan of such mine, on a scale of not
5 less than one hundred, and not more than one thousand
6 feet to the inch. Such map or plan shall show the open-
7 ings or excavations, the shafts, slopes, entries and air-
8 ways, with darts or arrows showing directions of air cur-
9 rents, headings, rooms, pillars, and such portions of such
10 mine or mines as may have been abandoned, the general
11 inclination of the coal strata, and so much of the property
12 lines and the outcrop of the coal seam of the tract of land
13 on which the mine is located as may be within one thou-
14 sand feet of any part of the workings of such mine. A
15 true copy of such map or plan shall be forwarded annually
16 by such operator, to the inspector of his district, to be
17 preserved among the records of his office and turned over
18 to his successor in office; but in no case shall any copy
19 of the same be made without the consent of the operator,
20 nor shall the map be used by any person for any purpose
21 other than as intended by this article. The original map,
22 or a true copy thereof, shall be kept by such operator at
23 the office of the mine, and open at all reasonable times
24 for the examination and use of the inspector, and such
25 operator shall, twice within every twelve months, while
26 the mine is in operation, cause such survey and the map
27 thereof to be extended so as to accurately show the prog-
28 ress of the workings, the property lines and outcrops as
above provided.

29 The map or maps required by this section shall have
30 the certificate and seal of the engineer, in the following
31 form:

32 “I, the undersigned, hereby certify that this map is
33 correct and shows all the information, to the best of my
34 knowledge and belief, required by the mining laws of this

35 state, and covers the period ending.....
 36 _____
 37 Engineer”

VENTILATION

Sec. 3. *Plan of Ventilation; Approval by Director of Department of Mines.*—Every operator of a coal mine, before making any new or additional openings, shall submit to the director of the department of mines, for his information and approval, a general plan showing the proposed system of ventilation and ventilating equipment of the openings with their location and relative positions to adjacent developments; and no such new or additional openings shall be made until approved by the director of the department of mines. The director of the department of mines shall promptly approve any such plans submitted if the proposed system of ventilation and ventilating equipment meet the requirements of this article.

Sec. 4. *Fans.*—The ventilation of mines which extend more than two hundred feet underground, and which are opened after the effective date of this article, shall be produced by a mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director of the department of mines. In case of accident to a ventilating fan or its machinery whereby the ventilation of the mine is seriously interrupted, immediate action shall be taken by mine management, in a gassy mine, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If the ventilation is restored in a reasonable time, the face regions and other places, in the affected areas, where gas (methane) is likely to accumulate, shall be reexamined by a certified or competent person and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in a reasonable time all underground employees shall be removed from the mine or the affected areas. In mines classified as nongassy, when the ventilation is

23 seriously interrupted by fan stoppage or failure, imme-
24 diate action shall be taken by the mine management to
25 cut off the power and withdraw the men from the face
26 regions or other areas of the mine affected. If the venti-
27 lation is restored within a reasonable time, the face re-
28 gions and other places in the affected areas shall be re-
29 examined by a certified or competent person, and if found
30 in safe condition, work may be resumed. If ventilation is
31 not restored within a reasonable time all underground
32 employees shall be removed from the mine or affected
33 areas. If the ventilation is not restored within thirty
34 minutes in any mine the men shall be removed from the
35 mine or affected areas: *Provided, however,* That in mines
36 liberating gas in large quantities the men shall be re-
37 moved from the affected area unless the ventilation has
38 been restored in fifteen minutes.

39 All main fans installed after the effective date of this
40 article shall be located on the surface in fireproof housings
41 offset not less than fifteen feet from the nearest side of
42 the mine opening, equipped with fireproof air ducts pro-
43 vided with explosion doors or a weak wall, and operated
44 from an independent power circuit. In lieu of the re-
45 quirements for the location of fans and pressure-relief
46 facilities, a fan may be directly in front of, or over, a
47 mine opening: *Provided, however,* That such opening is
48 not in direct line with possible forces coming out of the
49 mine if an explosion occurs: *And provided further,* That
50 there is another opening having a weak-wall stopping or
51 explosion doors that would be in direct line with forces
52 coming out of the mine. All main fans shall be provided
53 with pressure-recording gauges, or water gauges. A daily
54 inspection shall be made of all main fans and machinery
55 connected therewith by a competent person and a record
56 kept of the same in a book prescribed for this purpose, or
57 by adequate facilities provided to permanently record the
58 performance of the main fan and to give warning of an
59 interruption to a fan.

60 Auxiliary blower or exhaust fans may be used to venti-
61 late shaft-and-slope-sinking operations and their under-
62 ground connections, rock tunnels being driven between

63 coal beds or through faults and wants, or in the driving
64 of single entries or rooms by mining equipment in use
65 at the time of the acquisition of the mine by the operator
66 or prior to the effective date of this article, or equipment
67 which may hereafter be developed through technological
68 progress, provided they are powered by permissible driv-
69 ing units when installed underground, operated contin-
70 uously while any work is being performed in the area be-
71 ing ventilated, and so placed that recirculation of the air is
72 not possible. The inby end of the tubing, line curtain or
73 other device shall be kept sufficiently close to the face to
74 dilute, render harmless and carry away all dangerous
75 gasses.

2 Sec. 5. *Ventilation of Mines in General.*—The operator
3 or mine foreman of every coal mine, whether worked by
4 shaft, slope or drift, shall provide and hereafter maintain
5 for every such mine adequate ventilation. In mines classi-
6 fied as gassy the quantity of air passing through the last
7 open crosscut in any pair or set of entries shall be not
8 less than six thousand cubic feet of air per minute, and
9 as much more as is necessary to dilute and render harm-
10 less and carry away flammable and harmful gases: *Pro-*
11 *vided, however,* That the quantity of air reaching the
12 last crosscut in pillar sections may be less than six thou-
13 sand cubic feet per minute if at least six thousand cubic
14 feet of air per minute is being delivered to the intake of
15 the pillar line. In nongassy mines the quantity of air
16 being circulated shall not be less than one hundred fifty
17 cubic feet per man per minute. If animals are used in a
18 mine, five hundred cubic feet per animal per minute must
19 be provided in addition to the minimum volume specified
20 for men. The air current shall under any conditions have
21 a sufficient volume and velocity to reduce and carry away
22 smoke from blasting and any flammable or harmful gases.
23 All active underground working places in a mine shall
24 be ventilated by a current of air containing not less
25 than nineteen and five-tenths per centum of oxygen, and
26 not more than one per centum of carbon dioxide, and no
27 harmful quantities of other noxious or poisonous gases.
As working places advance, crosscuts for air shall be

28 made not to exceed eighty feet apart in pillars, or line
29 brattice or other approved methods of ventilation shall
30 be used so as to properly ventilate the face. With the
31 approval of the state department of mines, greater dis-
32 tances than those so specified may be made between cross-
33 cuts. All crosscuts between the main intake and return
34 airways not required for passage of air and equipment
35 shall be closed with stoppings substantially built with in-
36 combustible material, so as to keep working places well
37 ventilated.

38 In gassy mines a system of bleeder openings or air
39 courses designed to provide positive movement of air
40 through and/or around abandoned or caved areas, suffi-
41 cient to prevent dangerous accumulation of gas in such
42 areas and to minimize the effect of variations in atmos-
43 pheric pressure, shall be made a part of pillar recovery
44 plans projected after the effective date of this article.

45 Not more than sixty persons shall be permitted to work
46 in the same air current: *Provided*, That a larger number,
47 not exceeding eighty persons, may be allowed by the
48 director of the department of mines where it is imprac-
49 ticable to comply with the foregoing requirements.

50 No operator or mine foreman shall permit any persons
51 to work where they are unable to maintain the quantity
52 and quality of the air current as heretofore required:
53 *Provided, however*, That such provision shall not pro-
54 hibit the employment of men to make places of employ-
55 ment safe.

56 The ventilation of any mine shall be so arranged by
57 means of airlocks, overcasts, or undercasts, that the use
58 of doors on passageways where men or equipment travel
59 may be kept to a minimum. Where doors are used in a
60 gassy mine they shall be erected in pairs so as to provide
61 a ventilated airlock, unless the doors are operated me-
62 chanically: *Provided, however*, That such provision shall
63 not apply to doors in or between panel or room entries.
64 In mines not classified as gassy, single doors may be used,
65 provided such doors are closed promptly after men or
66 equipment have passed through them.

67 Overcasts or undercasts shall be constructed of incom-
68 bustible material and maintained in good condition.

69 Where practicable, a crosscut shall be provided at or
70 near the face of each entry or room before such places
71 are abandoned.

72 Rooms, entries, airways, or other working places shall
73 not be driven in advance of air currents. Such provision
74 shall not prohibit, as the room, entry or aircourse ad-
75 vances, the "necking" of any place for a distance which
76 shall not exceed that actually required for the installation
77 of mining equipment in use at this location: *Provided,*
78 *however,* That such room necks or entries are kept free
79 of accumulations of methane by use of line brattice or
80 other adequate means.

2 Sec. 6. *Unused and Abandoned Parts of Mine.*—In
3 a gassy mine, all workings which are abandoned after
4 the effective date of this article, or the date such mine
5 became a gassy mine, whichever is later, shall be sealed
6 or ventilated. If such workings are sealed, the sealing
7 shall be done with incombustible material in a manner
8 prescribed by the director of the department of mines;
9 and one or more of the seals of every sealed area shall
10 be fitted with a pipe and cap or valve to permit the
11 sampling of gases and measuring of hydrostatic pressure
12 behind such seals. For the purpose of this section, work-
13 ings within a panel shall not be deemed to be abandoned
14 until such panel is abandoned.

15 In a gassy mine, air that has passed through an aban-
16 doned panel which is inaccessible for inspection, or air
17 that has been used to ventilate an area from which the
18 pillars have been removed, shall not be used to ventilate
19 any active face area in such mine: *Provided, however,*
20 That such provision shall not apply to air which is being
21 used to ventilate an active pillar line and rooms which are
22 necessary to establish and maintain such pillar line.

CLASSIFICATION OF MINES AND EXAMINATIONS

2 Sec. 7. *Gassy Mines; Nongassy Mines; Examination.*—
3 In a gassy mine, within four hours immediately preceding

3 the beginning of a coal-producing shift, and before any
4 workman in such shift, other than those who may be
5 designated to make the examinations, enter the under-
6 ground areas of such mine, a certified foreman or fire boss,
7 designated by the operator of such mine to do so, shall
8 make an examination of such areas.

9 Idle or abandoned sections shall be examined for gas
10 and other dangerous conditions by a certified foreman
11 or fire boss before other employees are permitted to enter
12 to work in such places. No persons other than certified
13 persons shall enter any underground area in a gassy mine,
14 except during a coal-producing shift, unless an examina-
15 tion of such area has been made within twelve hours im-
16 mediately preceding their entrance into such area.

17 In a nongassy mine an examination shall be made at
18 least once in each calendar day during which coal is pro-
19 duced. This examination shall be made within four hours
20 immediately preceding the beginning of the first coal-
21 producing shift on such day.

MINE FOREMAN

Sec. 8. *Mine Foreman; When to Be Employed; Quali-
2 fications; Assistants.*—In every coal mine where five or
3 more persons are employed in a period of twenty-four
4 hours, the operator shall employ a mine foreman who
5 shall be a competent and practical person, holding a
6 certificate of competency for such position issued to him
7 by the department of mines after an examination by such
8 department. In order to receive a certificate of com-
9 petency to qualify as mine foreman, he shall at the time
10 he takes the examination, be a citizen and resident of
11 this state, be at least twenty-five years of age, of good
12 moral character and temperate habits, having had at least
13 five years' experience in the underground working, venti-
14 lation and drainage of coal mines, or be a graduate of
15 the school of mines of West Virginia university or of
16 another accredited mining engineering school and have
17 had three years' practical experience in coal mines: *Pro-
18 vided, however,* That in order for any person to be em-

19 ployed as a mine foreman in a gassy mine, three years of
20 his practical experience shall have been in a mine liber-
21 ating methane.

22 In mines in which the operations are so extensive that
23 all the duties devolving upon the mine foreman cannot
24 be discharged by one man, competent persons having had
25 at least three years' experience in coal mines may be
26 designated as assistants, who shall act under the mine
27 foreman's instructions and the mine foreman shall be
28 responsible for their conduct in the discharge of their
29 duties under such designation.

Sec. 9. *Same; Duties; Ventilation; Loose Coal, Slate
2 or Rock; Props; Drainage of Water.*—The duties of the
3 mine foreman shall be to keep a careful watch over the
4 ventilating apparatus, the airways, traveling ways, pumps
5 and drainage. He shall see that as the miners advance
6 their excavations proper break-throughs are made so as
7 to properly ventilate the mine; that all loose coal, slate
8 and rock overhead in the working places and along the
9 haulways are removed or carefully secured so as to pre-
10 vent danger to persons employed in such mines, and that
11 sufficient suitable props, caps, timbers, roof bolts, or other
12 approved methods of roof supports are furnished for the
13 places where they are to be used, and delivered at suitable
14 points. The mine foreman shall have all water drained
15 or hauled out of the working places where practicable,
16 before the miners enter, and such working places shall
17 be kept dry as far as practicable while the miners are at
18 work. It shall be the duty of the mine foreman to see
19 that proper crosscuts are made, and that the ventilation
20 is conducted by means of such crosscuts through the rooms
21 by means of checks or doors placed on the entries or other
22 suitable places, and he shall not permit any room to be
23 opened in advance of the ventilating current. The mine
24 foreman, or other certified persons designated by him,
25 shall measure the air current with an anemometer at
26 least twice each month at the inlet and outlet at or near
27 the faces of the advanced headings, and shall keep a
28 record of such measurements in a book or upon a form
29 prescribed by the director of the department of mines.

30 Signs directing the way to outlets or escapeways shall be
31 conspicuously placed throughout the mine.

Sec. 10. *Same; Haulage Roads.*—The mine foreman
2 shall require that all slopes, incline planes and haulage
3 roads used by any person in the mine shall conform to
4 the provisions of this article.

Sec. 11. *Same; Signals on Haulways; Lights at Mouth
2 and Bottom of Shaft; Operation of Cages.*—On all haul-
3 ways, where hauling is done by machinery of any kind,
4 the mine foreman shall provide for a proper system
5 of signals, and a conspicuous light on the front and rear
6 of every trip or train of cars when in motion in a mine.
7 When hoisting or lowering of men occurs in the morning
8 before daylight, or in the evening after darkness, at any
9 mine operated by shaft, the mine foreman shall provide
10 and maintain at the shaft mouth a light of stationary
11 character sufficient to show the landing and all surround-
12 ing objects distinctly and sufficient light of a stationary
13 character shall be located at the bottom of the shaft so
14 that persons coming to the bottom may clearly discern
15 the cages and other objects contiguous thereto. The mine
16 foreman shall require that no cages on which men are
17 riding shall be lifted or lowered at a rate of speed greater
18 than one thousand feet per minute, and that no mine cars,
19 either empty or loaded, shall be hoisted while men are
20 being lowered or hoisted, and no cage having an unstable
21 self dump platform shall be used for the carrying of
22 workmen unless the same is provided with some device
23 by which it may be securely locked when men are being
24 hoisted or lowered into the mine.

Sec. 12. *Same; Boreholes.*—It shall further be the
2 duty of the mine foreman to have boreholes kept not
3 less than twenty feet in advance of the face, and where
4 necessary, one each cut on sides of the working places
5 that are being driven toward, and in dangerous prox-
6 imity to, an abandoned mine or part of mine which
7 may contain inflammable gases or which is filled with
8 water. These holes shall be drilled whenever any work-
9 ing place in an underground mine approaches within fifty

10 feet of abandoned workings in such mine as shown by
11 surveys made and certified by a competent engineer or
12 surveyor, or within two hundred feet of any other aban-
13 doned workings of such mine, which cannot be inspected.

Sec. 13. *Same; Instruction of Employees.*—It shall
2 be the duty of the mine foreman, or the assistant mine
3 foreman, of every coal mine in this state, to see that
4 every person employed to work in such mine shall,
5 before beginning work therein, be instructed in the par-
6 ticular danger incident to his work in such mine, and
7 furnished a copy of the mining laws and rules of such
8 mine. Every inexperienced person so employed shall work
9 under the direction of the mine foreman, his assistant, or
10 such other experienced worker as may be designated by
11 the mine foreman or assistant, until he is familiar with the
12 danger incident to his work.

Sec. 14. *Same; Daily Inspection of Working Places.*
2 —The mine foreman or his assistants shall visit and
3 carefully examine each working place in the mine at
4 least once each shift while the miners of such places
5 are at work, and shall direct that each working place
6 shall be secured by props, timbers, roof bolts, and/or
7 other approved methods of roof supports where neces-
8 sary, to the end that the working places shall be made
9 safe. Should the mine foreman or his assistants find a
10 place to be in a dangerous condition, they shall not leave
11 the place until it is made safe, or shall remove the persons
12 working therein until the place is made safe by some
13 competent persons designated for that purpose.

Sec. 15. *Same; Safety Inspection; Gas.*—It shall be
2 the duty of the mine foreman, or other certified person
3 designated by him, to examine all working places under
4 his supervision for hazards at least once during each
5 coal-producing shift, or oftener if necessary for safety.
6 In a gassy mine such examinations shall include tests
7 with a permissible flame safety lamp for methane and
8 oxygen deficiency. It shall also be his duty to remove
9 as soon as possible after its discovery any accumulations
10 of explosive or noxious gases in active workings and,
11 where practicable, any accumulations of explosive or

12 noxious gases in the worked out and abandoned portions
13 of the mine.

Sec. 16. *Same; Dangerous Places.*—The mine foreman
2 shall direct and see that all dangerous places and the
3 entrance or entrances to worked out and abandoned
4 places in all mines are properly dangered off across the
5 openings.

Sec. 17. *Same; Examination and Reports of Fire Boss.*—
2 The mine foreman shall also, each day, read carefully and
3 countersign with ink or indelible pencil all reports
4 entered in the record book of the fire bosses, and he shall
5 supervise the fire boss, or fire bosses, except as hereinafter
6 provided in section twenty-three of this article.

Sec. 18. *Same; Ascertainment, Record and Removal
of All Dangers.*—The mine foreman shall give prompt
2 attention to the removal of all dangers reported to
3 him by his assistants, the fire boss, or any other person
4 working in the mine, and in case it is impracticable to
5 remove the danger at once, he shall notify all persons
6 whose safety is menaced thereby to remain away from
7 the area where the dangerous condition exists. He, or
8 his assistants, or certified persons designated by him,
9 shall, at least once each week, travel and examine the air
10 courses, roads and openings that give access to old work-
11 ings or falls, and make a record of the condition of all
12 places where danger has been found, with ink or indelible
13 pencil in a book provided for that purpose.

Sec. 19. *Same; Duty to Notify Operator When Unable
to Comply With Law; Duty of Operator.*—The mine
2 foreman shall notify, in writing, the operator or super-
3 intendent of the mine of his inability to comply with
4 any of the requirements of sections eight to eighteen
5 of this article, and it shall then become the duty of such
6 operator or superintendent promptly to attend to the
7 matter complained of by the mine foreman so as to enable
8 him to comply with the provisions hereof if such com-
9 pliance be practicable. Every operator of a mine shall
10 furnish all supplies necessary for the mine foreman to
11

12 comply with the requirements of this article, after being
13 requested to do so in writing by the mine foreman.

Sec. 20. *Same; Death or Resignation; Successor.*—In
2 case of the death or resignation of a mine foreman, the
3 superintendent or manager shall appoint a certified man
4 to act as mine foreman, if one be available; and if not,
5 he may temporarily appoint any other competent man
6 who may serve with the approval of the director of the
7 department of mines until the next examination.

FIRE BOSS

Sec. 21. *Fire Boss; When to Be Employed; Qualifica-*
2 *tions.*—Every operator whose mines are classified as
3 gassy, shall employ a fire boss, who shall hold a certificate
4 of competency for such position issued to him by the
5 department of mines after taking an examination held
6 by the department of mines. In order to receive a cer-
7 tificate of competency to qualify as a fire boss, he shall
8 at the time he takes the examination, be a citizen of this
9 state, having had at least five years' experience in the
10 underground working, ventilation and drainage of coal
11 mines, and shall have had at least three years' experience
12 in mines liberating explosive gas; he shall have such
13 knowledge of methane and other dangerous gas or gases
14 as to be able to detect the same with a permissible flame
15 safety lamp; he shall have a practical knowledge of the
16 subject of ventilation of mines and the machinery and
17 appliances used for that purpose; and he shall also be a
18 person of good moral character and temperate habits.

Sec. 22. *Fire Boss or Certified Person Acting as Such;*
2 *Duties Generally; Records Open for Inspection.*—It shall
3 be the duty of the fire boss, or a certified person acting as
4 such, to prepare a danger signal (a separate signal for
5 each shift) with red color at the mine entrance at the
6 beginning of his shift or prior to his entering the mine to
7 make his examination and, except for those persons
8 already on assigned duty, no person except the mine
9 owner, operator, or agent, and only then in the case of
10 necessity, shall pass beyond this danger signal until the

11 mine has been examined by the fire boss or other certified
12 person and the mine or certain parts thereof reported by
13 him to be safe. When reported by him to be safe, the
14 danger sign or color thereof shall be changed to indicate
15 that the mine is safe in order that employees going on
16 shift may begin work. Each person designated to make
17 such fire boss examinations shall be assigned a definite
18 underground area of such mine, and, in making his ex-
19 amination shall examine all active working places in the
20 assigned area and make tests with a permissible flame
21 safety lamp for accumulations of methane and oxygen
22 deficiency; examine seals and doors; examine and test the
23 roof, face, and ribs in the working places and on active
24 roadways and travelways, approaches to abandoned
25 workings and accessible falls in active sections. He shall
26 place his initials and the date at or near the face of each
27 place he examines. Should he find a condition which he
28 considers dangerous to persons entering such areas, he
29 shall place a conspicuous danger sign at all entrances to
30 such place or places. Only persons authorized by the
31 mine management to enter such places for the purpose of
32 eliminating the dangerous condition shall enter such place
33 or places while the sign is posted. Upon completing his
34 examination he shall report by suitable communication
35 system or in person the results of this examination to a
36 certified person designated by mine management to re-
37 ceive and record such report, at a designated station on
38 the surface of the premises of the mine or underground,
39 before other persons enter the mine to work in such coal-
40 producing shifts. He shall also record the results of his
41 examination with ink or indelible pencil in a book pre-
42 scribed by the director of the department of mines kept
43 for such purpose at a place on the surface of the mine
44 designated by mine management. All records of daily
45 and weekly reports, as prescribed herein, shall be open
46 for inspection by interested persons.

2 Sec. 23. *Same; No Superior Officers.*—In the perform-
3 ance of the duties devolving upon fire bosses, or certified
4 persons acting as such, they shall have no superior officers,
5 but all the employees working inside of such mine or

5 mines shall be subordinate to them in their particular
6 work.

Sec. 24. *Unlawful to Enter Mine Until Fire Boss Re-*
2 *ports It Safe; Exceptions.*—No person shall enter such
3 mine or mines for any purpose at the beginning of work
4 upon each shift therein until such signal or warning has
5 been given by the fire boss or bosses as to the safety
6 thereof, as by statute provided, except under the direc-
7 tion of the fire boss or bosses, and then for the purpose
8 of assisting in making the mine safe: *Provided, however,*
9 *That men regularly employed on a shift during which*
10 *the mine is being preshift examined by a fire boss or cer-*
11 *tified person shall be permitted to leave or enter the mine*
12 *in the performance of their duties.*

Sec. 25. *Authority of Fire Boss to Perform Other Duties.*
2 —Notwithstanding any other provision in this article con-
3 tained, any person who holds a certificate issued by the
4 state department of mines certifying his competency to
5 act as fire boss may perform the duties of a fire boss and
6 any other duties, statutory or otherwise, for which he is
7 qualified, in the same mine or section and on the same
8 day or shift.

COAL DUST AND ROCK DUST

Sec. 26. *Control of Coal Dust; Rock Dusting.*—In all
2 mines, dangerous accumulations of fine, dry coal dust
3 shall be removed from the mine, and all dry and dusty
4 operating sections and haulageways and the back entries
5 for at least one thousand feet out by the first active work-
6 ing place in each operating section shall be kept watered
7 down or rock dusted, or dust allayed by such other
8 methods as may be approved by the director of the de-
9 partment of mines.

10 All mines or locations in mines that are too wet or too
11 high in incombustible content for a coal dust explosion
12 to initiate or propagate are not required to be rock dusted
13 during the time any of these conditions prevail. Coal dust
14 and other dust in suspension in unusual quantities shall
15 be allayed by sprinkling or other dust allaying devices.

16 In all dry and dusty mines, or sections thereof, rock dust
17 shall be applied and maintained upon the roof, floor and
18 sides of all operating sections, haulageways and parallel
19 entries connected thereto by open crosscuts. Back entries
20 shall be rock dusted for at least one thousand feet out
21 by the junction with the first active working place. Rock
22 dust shall be so applied to include the last open crosscut
23 of rooms and entries, and to within forty feet of the faces.
24 Rock dust shall be maintained in such quantity that the
25 incombustible content of the mine dust that could initiate
26 or propagate an explosion shall not be less than sixty-five
27 per cent.

28 Rock dust shall not contain more than five per cent by
29 volume of quartz or free silica particles and shall be
30 pulverized so that one hundred per cent will pass through
31 a twenty mesh screen and seventy per cent or more will
32 pass through a two hundred mesh screen.

ROOF — FACE — RIBS

2 *Sec. 27. Instruction of Workmen as to Testing; Exami-*
3 *nation of Working Area; Correcting Dangerous Condi-*
4 *tions.*—It shall be the duty of the mine foreman and his
5 subordinate supervisors to ascertain that all workmen are
6 trained in the proper methods of testing roof, face and
7 ribs. The mine foreman shall designate the tool or tools
8 to be used for testing. Face workers and other employees
9 whose work exposes them to hazards or falls of roof and
10 coal shall thoroughly test the roof, face and ribs, before
11 starting to work or before starting a machine, and fre-
12 quently thereafter. The required tests may be made by
13 any competent person for a crew. If roof, face or rib
14 conditions are found to be unsafe, they shall be corrected
15 by taking down loose material, or shall be securely sup-
16 ported, before work is started. If roof, face or rib con-
17 ditions are found to be unsafe, and the unsafe condition
18 cannot be corrected by normal taking down or supporting
19 practices, the place shall be guarded or a danger sign
20 erected to prevent unauthorized entrance, and the super-
21 visor promptly notified. Only men capable of correcting
22 the dangerous condition may be delegated to do such
work. Supervisors shall examine for unsafe conditions

23 the roof, faces, ribs and timbers or supports of all working
24 places each time they visit a place. Unsafe conditions
25 found by them shall be corrected promptly.

Sec. 28. *Roof Support.*—Minimum timbering or other
2 roof support methods suitable to the roof conditions and
3 mining system of each mine or part of a mine shall be
4 adopted and complied with. Additional timbering or sup-
5 porting shall be used when and where necessary. It shall
6 be the duty of the mine foreman or his subordinate super-
7 visors to instruct all workmen in proper methods of set-
8 ting timbers or placing roof supports; and, it shall be the
9 duty of the workmen to comply with the instructions in
10 setting timbers and roof supports. The roof in all under-
11 ground working places, unless self-supporting, shall be
12 secured to protect employees from falls. Safety posts,
13 jacks or temporary crossbars shall be set close to the face
14 when necessary for safety before other operations are
15 begun and as needed thereafter. Where roof supports
16 are required at the working faces, persons shall not ad-
17 vance beyond supported roof, except those who are as-
18 signed to install supports. Timbering or roof support
19 materials to be used as required in supporting the roof in
20 underground workings shall be delivered at or near the
21 working faces. In hand loading mines the miner shall
22 order timbers and roof support materials at least one day
23 in advance in order to have in his working place a suf-
24 ficient supply for his needs. He shall place his order with
25 his supervisor stating his requirements. Roof bolts shall
26 not be used in lieu of conventional timbering unless a
27 permit has been issued by the state department of mines.
28 Roof bolts shall not be recovered where complete extrac-
29 tion of pillars is attempted; nor shall bolts be removed
30 adjacent to clay veins; nor at the location of other
31 irregularities that introduce abnormal hazards. Where
32 roof bolt recovery is practiced, it shall be done only by
33 reasonable methods approved by the director of the de-
34 partment of mines. Recovery of roof supports shall not
35 be done except by experienced persons and only where
36 adequate temporary support is provided.

EXPLOSIVES AND BLASTING

2 Sec. 29. *Authorized Explosives.*—Permissible explosives
3 or permissible blasting devices only shall be used in
4 blasting coal or other material in underground coal mines.

5 Sec. 30. *Surface Magazines for Explosives.*—Separate
6 surface magazines shall be provided for storage of ex-
7 plosives, detonators and blasting heater elements. Surface
8 magazines shall be constructed of incombustible mate-
9 rials, be reasonably bullet proof and with no metal or
10 sparking material exposed inside the magazine. Surface
11 magazines shall be provided with doors constructed of
12 at least one-fourth inch steel plate lined with a two-inch
13 thickness of wood or the equivalent, properly screened
14 ventilators, and with no openings except for entrances
15 and ventilation, and shall be kept locked securely when
16 unattended. The area for a distance of at least twenty-five
17 feet in all directions shall be kept free of materials of a
18 combustible nature; suitable warning signs shall be
19 erected, so located that a bullet passing directly through
20 the face of the sign will not strike the magazine. The
21 location of magazines shall be not less than two hundred
22 feet from any mine openings, occupied buildings or public
23 roads unless barricaded. If magazines are illuminated
24 electrically, the lamps shall be of vapor-proof type prop-
25 erly installed and wired, and smoking and open lights
26 shall be prohibited in or near any magazine.

27 Sec. 31. *Transportation of Explosives.*—Individual con-
28 tainers used to carry permissible explosives or detonators
29 shall be constructed of substantial, nonconductive ma-
30 terials, kept closed and maintained in good condition.
31 When explosives or detonators are transported under-
32 ground in cars moved by means of locomotives, ropes, or
33 other motive power, they shall be in substantially covered
34 cars or in special substantially-built covered containers
35 used specifically for transporting detonators or explosives.
36 Explosives or detonators shall not be hauled into or out
37 of a mine within five minutes preceding or following a
38 man trip. Where explosives and detonators are trans-
39 ported underground by belts they shall be handled in the
40 following manner: In the original and unopened cases,

15 in special closed cases constructed of nonconductive ma-
16 terial, or in suitable individual containers. Clearance
17 requirements shall be a minimum of eighteen inches; stop
18 controls shall be provided at loading and unloading points,
19 and an attendant shall supervise the loading and unload-
20 ing. Neither explosives nor detonators shall be trans-
21 ported on flight or shaking conveyors, mechanical loading
22 machines, locomotives, scrapers, cutting machines, drill
23 trucks, or any self-propelled mobile equipment. If ex-
24 plosives and detonators are transported in the same
25 explosives car or in the same special container, they shall
26 be separated by at least four inches of hardwood partition
27 or the equivalent; the bodies of such cars or containers
28 shall be constructed or lined with nonconductive ma-
29 terial. No hand loader shall take into any mine any larger
30 quantity of explosives or detonators than he may reason-
31 ably expect to use in any one shift.

Sec. 32. *Underground Storage of Explosives.*—Explo-
2 sives and detonators stored underground shall be kept in
3 section boxes or magazines of substantial construction
4 with no metal exposed on the inside, and be located at
5 least fifteen feet from roadways and power wires in a
6 well rock-dusted location protected from falls of roof.
7 If not kept in separate boxes or magazines not less than
8 five feet apart they may be kept in the same box or maga-
9 zine if separated by at least a four-inch hardwood parti-
10 tion or the equivalent. Not more than a forty-eight hour
11 supply of explosives or detonators shall be stored under-
12 ground in section boxes or magazines. These boxes or
13 magazines shall be kept at least one hundred feet from the
14 faces and out of the direct line of blasting.

Sec. 33. *Preparation of Shots; Blasting Practices.*—Only
2 competent and experienced persons designated by mine
3 management shall be permitted to handle explosives and
4 to do blasting. Only electric detonators of proper strength
5 fired with permissible shot firing units shall be used and
6 drillholes shall be stemmed with at least twenty-four
7 inches of incombustible material, or at least one-half of
8 the length of the hole shall be stemmed if the hole is less
9 than four feet in depth unless other permissible stemming

10 devices or methods are used. Drillholes shall not be drilled
11 beyond the limits of the cut, and as far as practicable
12 cuttings and dust shall be cleaned from the holes before
13 the charge is inserted. Charges of explosives exceeding
14 one and one-half pounds, but not exceeding three pounds,
15 shall be used only if drillholes are six feet or more in
16 depth. Ample warning shall be given before shots are
17 fired, and care shall be taken to determine that all persons
18 are in the clear before firing. Men shall be removed from
19 adjoining places and other places when there is danger of
20 shots blowing through. No shots shall be fired in any
21 place known to liberate explosive gas until such place
22 has been properly examined by a competent person who
23 is designated by mine management for that purpose, and
24 no shots shall be fired in any place where gas is detected
25 with a permissible flame safety lamp until such gas has
26 been removed by means of ventilation. After firing any
27 shot, or shots, the person firing the same shall not return
28 to the working face until the smoke has been cleared
29 away and then he shall make a careful examination of
30 the working face before leaving the place, or before per-
31 forming any other work in the place. Multiple shooting
32 may be practiced but only as prescribed by the depart-
33 ment of mines. A maximum of ten holes may be fired in
34 bottom or roof rock during grading operations provided
35 this work is being performed in intake air only. Electrical
36 equipment shall not be operated in the face areas and only
37 work in connection with timbering and general safety
38 shall be performed while boreholes are being charged.
39 Shots shall be fired promptly after charging. Mudcap
40 (adobes) or any other unconfined shots shall not be per-
41 mitted in any coal mine. No solid shooting shall be per-
42 mitted without written permission of the department of
43 mines.

44 Blasting cables shall be well insulated and shall be as
45 long as may be necessary to permit persons authorized to
46 fire shots to get in a safe place out of the line of fire. The
47 cable when new shall be at least one hundred twenty-five
48 feet in length and never less than one hundred feet.
49 Shooting cables shall be kept away from power wires and
50 all other sources of electric current, connected to the leg

51 wires by the person who fires the shot, staggered as to
52 length or well separated at the detonator leg wires, and
53 shunted at the battery end until ready to connect to the
54 blasting unit.

Sec. 34. *Misfires of Explosives.*—Where misfires occur
2 with electric detonators, a waiting period of at least five
3 minutes shall elapse before anyone returns to the shot.
4 After such failure, the blasting cable shall be disconnected
5 from the source of power and the battery ends short-
6 circuited before electric connections are examined.

7 Explosives shall be removed by firing a separate charge
8 at least two feet away from, and parallel to, the misfired
9 charge or by washing the stemming and the charge from
10 the borehole with water, or by inserting and firing a new
11 primer after the stemming has been washed out.

12 A careful search of the working place, and, if necessary,
13 of the coal after it reaches the tipple shall be made after
14 blasting a misfired hole, to recover any undetonated
15 explosive.

16 The handling of a misfired shot shall be under the
17 direct supervision of the mine foreman or a competent
18 person designated by him.

Sec. 35. *Other Blasting Devices.*—The provisions govern-
2 ing the handling, storage, transportation and use of per-
3 missible explosives shall apply to all other blasting de-
4 vices employing a heater element when used under-
5 ground.

6 Where compressed air is used for blasting, the air-lines
7 shall be grounded at the compressor and, if practical, at
8 other low-resistant ground connections along the lines.
9 They shall not be connected in any way to rails, water
10 lines, or other electric return conductors and shall be
11 adequately insulated and protected where they cross
12 electric wires, underneath track, or at places where
13 equipment passes over or under. Steel, copper, or other
14 air lines connected therewith shall not be handled or
15 repaired when air pressure is in the line. Shutoff valves
16 shall be installed every thousand feet in all compressed-

17 air blasting lines and at all points where branch lines
18 leave the main line and blowdown valves shall not be less
19 than fifty feet from the face and shall be around a corner.

20 When misfires occur with any other blasting devices
21 they shall be handled in a safe manner and under the
22 supervision of the mine foreman or a competent person
23 designated by him.

HOISTING

Sec. 36. *Hoisting Machinery; Telephones and Safety
2 Devices; Hoisting Engineers and Drum Runners.*—The
3 operator of every coal mine worked by shaft shall provide
4 and maintain a metal tube, telephone or other approved
5 means of communication from the top to the bottom and
6 intermediate landings of such shaft, suitably adapted to
7 the free passage of sound, through which conversation
8 may be held between persons at the top and at the bottom
9 of the shaft; a standard means of signaling; an approved
10 safety catch, bridle chains, automatic stopping device, or
11 automatic overwind; a sufficient cover overhead on every
12 cage used for lowering or hoisting persons; an approved
13 safety gate at the top of the shaft; and an adequate brake
14 on the drum of every machine used to lower or hoist per-
15 sons in such shaft. Such operator shall have the ma-
16 chinery used for lowering and hoisting persons into or out
17 of the mine kept in safe condition, equipped with a reli-
18 able indicator, and inspected once in each twenty-four
19 hours by a competent person. Where a hoisting engineer
20 is required he shall be readily available at all times when
21 men are in the mine. He shall operate the empty cage up
22 and down the shaft at least one round trip at the begin-
23 ning of each shift and after the hoist has been idle for one
24 hour or more before hoisting or lowering men, and there
25 shall be cut out around the side of the hoisting shaft, or
26 driven through the solid strata at the bottom thereof, a
27 traveling way not less than five feet high and three feet
28 wide to enable a person to pass the shaft in going from
29 one side of it to the other without passing over or under
30 the cage or other hoisting apparatus. Positive stop blocks
31 or derails shall be placed near the top and at all inter-
32 mediate landings of slopes and surface inclines and at

33 approaches to all shaft landings. A waiting station with
34 sufficient room, ample clearance from moving equipment,
35 and adequate seating facilities shall be provided where
36 men are required to wait for man trips or man cages, and
37 the men shall remain in such station until the man trip
38 or man cage is available.

39 No operator of any coal mine worked by shaft, slope, or
40 incline shall place in charge of any engine or drum used
41 for lowering or hoisting persons employed in such mine
42 any but competent and sober engineers or drum runners;
43 and no engineer or drum runner in charge of such ma-
44 chinery shall allow any person, except such as may be
45 designated for this purpose by the operator, to interfere
46 with any part of the machinery; and no person shall
47 interfere with any part of the machinery; and no person
48 shall interfere with or intimidate the engineer or drum
49 runner in the discharge of his duties. Where the mine is
50 operated or worked by shaft or slope, a minimum space
51 of two and one-half square feet per person shall be avail-
52 able for each person on any cage or car where men are
53 transported. In no instance shall more than twenty men
54 be transported on a cage or car without the approval of
55 the director of the department of mines. No person shall
56 ride on a loaded cage or car in any shaft, slope, or incline:
57 *Provided, however,* That this shall not prevent any trip
58 rider from riding in the performance of his authorized
59 duties. No engineer shall be required for automatically
60 operated cages, elevators, or platforms.

TRANSPORTATION

Sec. 37. *Haulage; Equipment; Practices.*—The roadbed,
2 rails, joints, switches, frogs, and other elements of all
3 haulage roads shall be constructed, installed and main-
4 tained in a manner consistent with speed and type of
5 haulage operations being conducted to insure safe opera-
6 tion.

7 Track switches, except room and entry development
8 switches, shall be provided with properly installed throws,
9 bridle bars and guard rails; switch throws and stands,
10 where possible, shall be placed on the clearance side.

11 Haulage roads on entries developed after the effective
12 date of this article shall have a continuous unobstructed
13 clearance of at least twenty-four inches from the farthest
14 projection of any moving equipment on the clearance side.

15 On haulage roads where trolley lines are used, the clear-
16 ance shall be on the side opposite the trolley lines.

17 On the trolley wire or "tight" side, there shall be at
18 least six inches of clearance from the farthest projection
19 of any moving equipment. On haulage roads developed
20 after the effective date of this article, where conditions
21 permit there shall be a clearance of twelve inches main-
22 tained on the tight or wire side, but in no instance shall
23 the clearance be less than six inches.

24 The clearance space on all haulage roads shall be kept
25 free of loose rock, coal, supplies or other materials, pro-
26 vided that not more than twenty-four inches need be
27 kept free of such obstructions.

28 Ample clearance shall be provided at all points where
29 supplies are loaded or unloaded along haulage roads or
30 conveyors.

31 Shelter holes shall be provided along haulage entries
32 driven after the effective date of this article where loco-
33 motive, rope or animal haulage is used. Such shelter
34 holes shall be spaced not more than eighty feet apart.
35 Except where the trolley wire is six feet six inches or
36 more above the roadbed or guarded effectively at the
37 shelter holes, they shall be on the side of the entry oppo-
38 site the trolley wire.

39 Shelter holes made after the effective date of this article
40 shall be at least five feet in depth, not more than four
41 feet in width, and as high as the traveling space. Room
42 necks and crosscuts may be used as shelter holes even
43 though their width exceeds four feet.

44 Shelter holes shall be kept clear of refuse and other ob-
45 structions.

46 Shelter holes shall be provided at switch throws, and
47 manually operated permanent doors, except where more

48 than six feet of clearance is maintained, and at room
49 switches.

50 No steam locomotive shall be used in mines where men
51 are actually employed in the extraction of coal, but this
52 shall not prevent operation of a steam locomotive through
53 any tunnel haulway or part of a mine that is not in actual
54 operation and producing coal.

55 Underground equipment powered by internal combus-
56 tion engines using petroleum products, alcohol, or any
57 other compound shall not be used in a coal mine unless
58 such equipment has been approved by the United States
59 bureau of mines for underground use in coal mines, and
60 only then when this equipment is maintained in compli-
61 ance with the requirements of the approval schedule.

62 Locomotives, mine cars, supply cars, shuttle cars, and
63 all other haulage equipment shall be maintained in a safe
64 operating condition. Each locomotive shall be equipped
65 with a suitable lifting jack and handle. An audible warn-
66 ing device and headlights shall be provided on each loco-
67 motive and each shuttle car. All other mobile equipment,
68 using the face areas of the mine, purchased after the
69 effective date of this article, shall be provided with a
70 conspicuous light or other effective method, so as to re-
71 duce the possibility of collision.

72 No persons other than those necessary to operate a trip
73 or car shall ride on any loaded car or on the outside
74 of any car.

75 The pushing of trips, except for switching purposes, is
76 prohibited on main haulage roads. Motormen and trip
77 riders shall use care in handling locomotives and cars.
78 It shall be their duty to see that there is a conspicuous
79 light on the front and rear of each trip or train of cars
80 when in motion: *Provided, however,* That trip lights
81 need not be used on cars being shifted to and from loading
82 machines, on cars being handled at loading heads during
83 gathering operations at working faces or on trips being
84 pulled by animals. No persons shall ride on locomotives
85 or loaded cars unless granted permission by the mine
86 foreman.

87 No motorman, trip rider or brakeman shall get on or
88 off cars, trips, or locomotives while they are in motion,
89 except that a trip rider or brakeman may get on or off
90 the rear end of a slowly moving trip or the stirrup of a
91 slowly moving locomotive to throw a switch, align a
92 derail or open or close a door.

93 Flying or running switches, and riding on the front
94 bumper of a car or locomotive are prohibited. Back poling
95 shall be prohibited except with precaution to the nearest
96 turning point (not over eighty feet), or when going up
97 extremely steep grades and then only at slow speed. The
98 operator of a shuttle car shall face in the direction of
99 travel except during the loading operation when he shall
100 face the loading machine.

101 A system of signals, methods or devices shall be used
102 to provide protection for trips, locomotives, and other
103 equipment, coming out onto tracks used by other equip-
104 ment. Where a dispatcher is employed to control trips,
105 traffic under his jurisdiction shall move only at his
106 direction.

107 Motormen shall inspect locomotives and report any
108 mechanical defects found to the proper supervisor before a
109 locomotive is put in operation.

Sec. 38. *Transportation of Men.*—Man trips shall be
2 pulled (unless self propelled) at safe speeds consistent
3 with the condition of roads and type of equipment used,
4 but not to exceed twelve miles an hour, except where
5 special substantially covered man-trip cars are used. Each
6 man trip shall be under the charge of a certified person
7 or other competent person designated by a mine foreman
8 or assistant mine foreman. It shall be operated inde-
9 pendently of any loaded trip of coal or other heavy ma-
10 terial, but may transport tools, small machine parts and
11 supplies. When mine cars are used for man trips on steep
12 grades a locomotive shall be used on each end of the trip.

13 Cars on the man trip shall not be overloaded, and suffi-
14 cient cars in good mechanical condition shall be provided.

15 Where "drop-bottom" cars are used, special safety pre-
16 cautions shall be taken.

17 No person shall ride under the trolley wire unless suit-
18 able covered man cars are used.

19 Men shall not load or unload before the cars in which
20 they are to ride, or are riding, come to a full stop. Men
21 shall proceed in an orderly manner to and from man trips.

22 When belts are used for transporting men, a minimum
23 clearance of eighteen inches shall be maintained between
24 the belt and the roof or crossbars, projecting equipment,
25 cap pieces, overhead cables, wiring, and other objects.
26 Where the height of the coal seam permits, the clearance
27 shall not be less than twenty-four inches.

28 The belt speed shall not exceed two hundred and fifty
29 feet per minute where the minimum overhead clearance
30 is eighteen inches, or three hundred feet per minute where
31 the minimum overhead clearance is twenty-four inches,
32 while men are loading, unloading, or being transported.
33 A signaling system or method shall be provided for stop-
34 ping the belt and men shall ride not less than six feet
35 apart.

36 An assistant mine foreman or some other person desig-
37 nated by the mine foreman shall supervise the loading
38 and unloading of belts and man trips. Where men are re-
39 quired to regularly cross over belts adequate and safe
40 facilities shall be provided.

41 Adequate clearance and proper illumination shall be
42 provided where men board or leave conveyer belts.

• ELECTRICITY

2 Sec. 39. *Electricity; General Provisions.*—Operators of
3 coal mines in which electricity is used as a means of power
4 shall comply with the following provisions:

5 All surface transformers, unless of a construction which
6 will eliminate shock hazards, or unless installed at least
7 eight feet above ground, shall be enclosed in a house or
8 surrounded by a fence at least six feet high. If the en-
9 closure is of metal, it shall be grounded effectively. The
10 gate or door to the enclosure shall be kept locked at all
times, unless authorized persons are present.

11 Underground transformers purchased after the effective
12 date of this article, shall be air cooled or cooled with non-
13 inflammable liquid or inert gas.

14 Underground stations containing transformers or cir-
15 cuit breakers filled with inflammable oil shall be provided
16 with door sills or their equivalent, which will confine the
17 oil if leakage or explosion occurs, and shall be of fireproof
18 construction.

19 Transformers shall be provided with adequate over-
20 load protection.

21 Battery charging stations, motor generator sets, rotary
22 converters and oil filled transformers and switches used
23 underground shall be housed in fireproof buildings ven-
24 tilated by a separate split of air direct to the main return
25 (rectifiers excepted).

26 “Danger — high voltage” signs shall be posted con-
27 spicuously on all transformer enclosures, high-potential
28 switchboards, and other high-potential installations.

29 Circuit breakers or other overload devices shall be pro-
30 vided to protect power circuits.

31 Insulating platforms of wood, rubber, or other suitable
32 nonconductive material shall be kept in place at each
33 switchboard, and at stationary machinery where shock
34 hazards exist.

35 All power wires and cables in hoisting shafts, slopes and
36 power boreholes shall be properly insulated, substan-
37 tially installed and well maintained.

38 All power wires, except trailing cables, especially de-
39 signed cable used as electrical conductors to underground
40 rectifier or transformer stations, portable power cables or
41 bare or insulated ground and return wires, shall be sup-
42 ported on well-installed insulators and shall not contact
43 combustible material, roof or ribs.

44 Trolley and feeder wires shall be installed as follows:
45 Where installed on permanent haulage, after the effective
46 date of this article, they shall be: (1) at least six inches

47 outside the track gauge line; (2) provided with cutout
48 switches at intervals of not more than two thousand feet,
49 and near the beginning of all branch lines; and (3) kept
50 taut and not permitted to touch the roof, rib, or cross-
51 bars. Particular care shall be taken where they pass
52 through door openings to preclude bare wires from coming
53 in contact with combustible material.

54 Trolley or bare feeder cables shall be guarded ade-
55 quately where it is necessary for men to pass or work
56 under them regularly unless the wires are more than six
57 and one-half feet above the top of the rail. They shall also
58 be guarded adequately on both sides of doors, and at all
59 stations designated for the loading and unloading of man
60 trips, and at sand boxes.

61 After the effective date of this article, new underground
62 installations of electric face equipment in new mines shall
63 not exceed six hundred volts direct current, (five hundred
64 fifty volts D. C. equipment) or four hundred eighty volts
65 alternating current, (four hundred forty volts A. C. equip-
66 ment). No provision of this section shall prohibit the
67 use of voltages in excess of four hundred forty volts alter-
68 nating current on service lines to rectifiers, converters,
69 transformers or switches connected thereto located in
70 areas out by the immediate face regions.

71 In a gassy mine trolley and feeder wires shall not extend
72 beyond the last open crosscut and shall be kept at least one
73 hundred and fifty feet from open pillar workings. Trolley
74 wires and feeder wires shall be anchored securely, in-
75 sulated, and properly identified at the ends. Metallic
76 frames, casings, and other enclosures of stationary electric
77 equipment that can become "alive" through failure of in-
78 sulation or by contact with energized parts shall be
79 grounded effectively, or equivalent protection shall be
80 provided.

2 *Sec. 40. Same; Circuit Breakers, Switches, and Switch-*
3 *boards.*—Automatic circuit-breaking devices or fuses of
4 the correct type and capacity shall be installed so as
5 to protect all electric equipment against excessive over-
load: *Provided, however,* That this shall not apply to

6 locomotives operated regularly on grades exceeding five
7 per cent.

8 Disconnecting switches shall be installed underground
9 in all main direct current power circuits within five hun-
10 dred feet of the bottom of shafts and boreholes, and at
11 other places where main power circuits enter the mine.

12 Electric equipment and circuits shall be provided with
13 switches or other controls of safe design, construction and
14 installation.

15 When not in use, power circuits underground shall be
16 de-energized on idle days and idle shifts. Suitable danger
17 signs shall be posted conspicuously at all high-potential
18 switchboard installations.

Sec. 41. *Same; Bonding Track Used as Power Con-*
2 *ductor.*—Where track is used as a power conductor, rails
3 and switches on main entries shall be bonded and cross-
4 bonded in such a manner as to assure adequate return.
5 At least one rail on secondary track-haulage roads shall
6 be welded or bonded at every joint, and cross bonds shall
7 be installed at intervals of not more than two hundred
8 feet: *Provided, however,* That rail joints in such second-
9 ary haulage roads need not be bonded where a copper
10 feeder adequate in size parallels the track and is elec-
11 trically connected thereto at intervals of not more than
12 two hundred feet by cross bonds.

Sec. 42. *Same; Telephone Service or Communication*
2 *Facilities.*—Telephone service or equivalent two-way
3 communication facilities shall be provided in all mines be-
4 tween the surface and each working section that is more
5 than one thousand five hundred feet from the main portal.

6 Telephone lines, other than cables, shall be carried on
7 insulators, installed on the opposite side from power or
8 trolley wires, and where they cross power or trolley wires
9 they shall be insulated adequately.

10 Lightning arresters shall be provided at the points
11 where telephone circuits enter the mine.

Sec. 43. *Electric Equipment in Gassy Mines.*—After the
2 effective date of this article all electric face equipment

3 acquired for use in a mine classified as gassy shall be per-
4 missible: *Provided, however,* That nonpermissible electric
5 equipment may be used in a mine classified as gassy if,
6 before the effective date of this article or the date such
7 mine became a mine classified as gassy, whichever is later,
8 the operator of such mine, or his successor, owned or
9 leased such equipment or had ordered such equipment.

10 Electric equipment shall not be taken into or operated
11 in any place where methane can be detected with a flame
12 safety lamp at any point not less than eight inches from
13 the roof, face, or rib.

14 In a mine classified as gassy electric haulage locomotives
15 operated from trolley wire shall not be used in return air.
16 For the purpose of this provision, air used to ventilate
17 a section of a mine shall not be considered return air until
18 such time as the air has ventilated all of the workings in
19 the section.

20 No person shall be placed in charge of a coal-cutting
21 machine in any mine classified as gassy, who is not a com-
22 petent person, capable of determining the safety of the
23 roof and sides of the working places and detecting the
24 presence of explosive gas. Machine runners in mines
25 classified as gassy shall be required to undergo examina-
26 tion by a mine foreman to determine their fitness to de-
27 tect explosive gas before they are permitted to have charge
28 of machines in such mines, unless they are accompanied
29 by a certified or competent person who has passed such
30 an examination.

31 In any mine classified as gassy, a coal-cutting ma-
32 chine shall not be brought in by the last break-through
33 next to the working face until the machine man shall have
34 made an inspection for gas in the place where the machine
35 is to work, unless such examination is made by some other
36 competent person authorized and designated for that pur-
37 pose by the mine foreman. If explosive gas in excess of
38 one per cent is found in the place, the machine shall not
39 be taken in until the danger is removed.

40 In working places where explosive gas is likely to be
41 encountered, a safety lamp, or other suitable approved

42 apparatus for the detection of explosive gas, shall be pro-
43 vided for use with each mining machine when working,
44 and should any indication of explosive gas in excess of
45 one per cent appear on the flame of the safety lamp, or on
46 other apparatus used for the detection of explosive gas,
47 the person in charge shall immediately stop the machine,
48 cut off the current at the nearest switch and report the
49 condition to the mine foreman or supervisor. The machine
50 shall not again be started in such place until the mine
51 foreman, supervisor, or a person authorized by one of
52 them has examined it and pronounced it safe.

53 No coal-cutting machine shall be operated in a mine
54 classified as gassy for a longer period than thirty minutes
55 without an examination as above described being made for
56 gas, and if gas is found in excess of one per cent the current
57 shall at once be switched off the machine, and the trailing
58 cable shall forthwith be disconnected from the power sup-
59 ply until the place is pronounced safe: *Provided, however,*
60 That at locations where continuous mining machines are
61 operating, such examinations for methane shall be made
62 at intervals not exceeding twenty minutes.

63 Machine runners and helpers shall use care while
64 operating mining machines. They shall not permit any
65 person to remain near the machine while it is in opera-
66 tion. They shall examine the roof of the working place
67 and see that it is safe before starting to operate the ma-
68 chine. They shall not move the machine while the cutter
69 chain is in motion.

Sec. 44. *Same; Hand-held Drills; Trailing Cables.*—

2 Electric drills and other electrically operated rotating
3 tools intended to be held in the hands shall have the
4 electric switch constructed so as to break the circuit when
5 the hand releases the switch, or shall be equipped with
6 friction or safety clutches.

7 All new trailing cables purchased after the effective
8 date of this article shall be safely and effectively insulated
9 by flame resistive materials. Splices in trailing cables
10 shall be made in a workmanlike manner, mechanically

11 strong and well insulated so as to exclude moisture so far
12 as possible.

Sec. 45. *Same; Underground Illumination.*—Electric
2 lights, or other approved methods of lighting, shall be
3 installed so that they do not come in contact with com-
4 bustible materials, and the wires shall be supported by
5 suitable insulators and fastened securely to the power
6 conductors.

Sec. 46. *Welding and Cutting; Blowtorches; Fuel.*—
2 Blowtorches may be used by competent persons in mines,
3 provided (1) suitable precautions are taken against igni-
4 tion of methane, coal dust, or combustible materials, (2)
5 means are provided for prompt extinguishment of fires
6 accidentally started, and (3) fuel is properly controlled.
7 Blowtorches must be maintained at all times in good oper-
8 ating condition and leakproof.

9 Fuel for blowtorches, in quantities not exceeding one
10 day's supply, shall be transported from the surface in
11 approved safety cans, leakproof and sturdy. In trans-
12 ferring fuel to the torch, a funnel or flexible nozzle shall
13 be used to avoid spillage, and neither the supply can nor
14 the torch shall be opened within twenty-five feet of any
15 open light or other thing containing or apt to contain fire,
16 arcs, or sparks.

17 Welding and cutting may be done in mines: *Provided,*
18 That all equipment and gauges are maintained in good
19 order and not abused, that suitable precautions are taken
20 against ignition of methane, coal dust, or combustible
21 materials, that means are provided for prompt extinguish-
22 ment of fires accidentally started, and that only persons
23 who have demonstrated competency in welding and cut-
24 ting are entrusted to do this work. Adequate eye protec-
25 tion shall be used by all persons doing welding or cutting,
26 and precautions shall be taken to prevent other persons
27 from exposure that might be harmful to their eyes.

28 In mines classed as gassy, a certified person shall ex-
29 amine for gas with permissible flame safety lamps before
30 and during welding or cutting in, at or near working faces.

31 The safety of the equipment and methods used in such
32 cases shall be subject to approval of the director of the
33 department of mines.

2 *Sec. 47. Responsibility for Care and Maintenance of*
3 *Face Equipment.*—Mine operators shall maintain face
4 equipment in safe operating condition. Equipment oper-
5 ators shall exercise reasonable care in the operation of
6 the equipment entrusted to them, and shall promptly
report defects known to them.

2 *Sec. 48. Control of Dust and Other Inhalation Hazards.*
3 —Men exposed for short periods to gas-, dust-, fume-, and
4 mist-inhalation hazards shall wear permissible respiratory
5 equipment. When exposure is for prolonged periods, dust
6 shall be controlled by the use of permissible dust collec-
tors, or by water or other approved methods.

SAFEGUARDS FOR MECHANICAL EQUIPMENT

2 *Sec. 49. Safeguards for Mechanical Equipment.*—The
3 cutter chains of mining machines shall be locked securely
4 by mechanical means or electrical interlocks while such
5 machines are parked or being trammed. Loading machines
6 shall not be trammed with loading arms in motion except
when loading materials.

7 Belt, chain or rope drives and the moving parts of
8 machinery which are within seven feet of the floor, ground
9 or platform level, unless isolated, shall be guarded ade-
10 quately. Repair pits shall be kept covered or guarded at
11 all times when not in use. Machinery shall not be lubri-
12 cated or repaired while in motion, except where safe
13 remote lubricating devices are used. Machinery shall not
14 be started until the person lubricating or repairing it has
15 given a clear signal. Guards which have been removed
16 shall be replaced before the machinery is again put into
17 use. Provision shall be made to prevent accumulations of
18 spilled lubricants.

19 Mechanically operated grinding wheels shall be equip-
20 ped with safety washers, substantial retaining hoods, and,
21 unless goggles are used, eye shields.

22 Rubber conveyor belts installed underground after the
23 effective date of this article shall be provided with cen-
24 trifugal switches. With the exception of main slopes,
25 where rubber conveyor belts are used, multiple entries
26 (three or more) shall be driven and the belt placed on a
27 separate split of air. Where fire resistant belts are in-
28 stalled, two or more entries shall be driven and a single
29 line of permanent stoppings may be used between the
30 intake and return airways and the belt installed in intake
31 air.

SURFACE STRUCTURES AND PRACTICES

Sec. 50. *Tipple and Cleaning Plant.*—In unusually dusty
2 locations, electric motors, switches and controls shall be
3 of dust-tight construction, or enclosed with reasonably
4 dust-tight housings or enclosures. Open-type motors,
5 switches or controls in use at the effective date of this
6 article in tipples and cleaning plants in unusually dusty
7 locations may be continued in use until such dust-tight
8 equipment can be procured, or until they can be provided
9 with reasonably dust-tight housings or enclosures.

10 Structures shall be kept free of excessive coal dust
11 accumulations.

12 Where coal is dumped at or near air intake openings,
13 reasonable provisions shall be made to prevent dust from
14 entering the mine.

15 Where repairs are being made to the plant, proper
16 scaffolding and proper overhead protection shall be pro-
17 vided for workmen wherever necessary.

18 Welding shall not be done in dusty atmospheres and
19 dusty locations shall be well cleaned, and firefighting
20 apparatus shall be readily available during welding.

21 Stairways, elevated platforms and runways shall be
22 equipped with handrails. Railroad car trimmer platforms
23 are excepted from such requirement.

24 Elevated platforms and stairways shall be provided
25 with toeboards where necessary, and they shall be kept
26 clear of refuse and ice and maintained in good repair.

2 Sec. 51. *Housekeeping.*—Good housekeeping shall be
3 practiced in and around mine buildings and yards. Such
4 practices include cleanliness, orderly storage of materials,
5 and the removal of possible sources of injury, such as
6 stumbling hazards, protruding nails and broken glass.

2 Sec. 52. *Lamp House.*—Naphtha or other flammable
3 liquids in lamp houses shall be kept in approved contain-
4 ers or other safe dispensers.

2 Sec. 53. *Smoking in and Around Surface Structures.*—
3 Smoking in or about surface structures shall be restricted
4 to places where it will not cause fire or an explosion.

MISCELLANEOUS SAFETY PROVISIONS AND REQUIREMENTS

2 Sec. 54. *Duties of Persons Subject to Article; Rules and*
3 *Regulations of Operators.*—It shall be the duty of the
4 operator, mine foreman, supervisors, fire bosses and other
5 officials to comply with and to see that others comply
6 with the provisions of this article.

7 It shall be the duty of all employees and checkweigh-
8 men to comply with this article and to cooperate with
9 management and the department of mines in carrying
10 out the provisions hereof.

11 Reasonable rules and regulations of an operator for the
12 protection of employees and preservation of property that
13 are in harmony with the provisions of this article and
14 other applicable laws shall be complied with. They shall
15 be printed on cardboard or in book form in the English
16 language and posted at some conspicuous place about the
17 mine or mines, and given to each employee upon request.

2 Sec. 55. *Protective Clothing.*—Welders and helpers shall
3 use proper shields or goggles to protect their eyes. All
4 employees shall have approved goggles or shields and use
5 same where there is a hazard from flying particles, or
6 other eye hazards.

7 Employees engaged in haulage operations and all other
8 persons employed around moving equipment on the sur-
9 face and underground shall wear snug-fitting clothing.

9 Protective gloves shall be worn when material which
10 may injure hands is handled, but gloves with gauntleted
11 cuffs shall not be worn around moving equipment.

Sec. 56. *Checking Systems.*—Each mine shall have a
2 check-in and check-out system that will provide positive
3 identification upon the person of every individual under-
4 ground. An accurate record of the men in the mine,
5 which shall consist of a written record, a check board, or
6 a time-clock record, shall be kept on the surface in a place
7 that will not be affected in the event of an explosion.
8 Said record shall bear a number or name identical to the
9 identification check carried by, or fastened to the belt of,
10 all persons going underground.

Sec. 57. *No Act Permitted Endangering Security of
2 Mine; Search for Intoxicants, Matches, Etc.*—No miner,
3 workman or other person shall knowingly injure any
4 shaft, lamp, instrument, air course, or brattice, or obstruct
5 or throw open airways, or carry matches or open lights
6 in the places worked by safety lights, or disturb any part
7 of the machinery or appliances, open a door closed for
8 directing ventilation and not close it again, or enter any
9 part of a mine against caution, or disobey any order of any
10 mine foreman or assistant mine foreman given in carrying
11 out any of the provisions of this section.

12 Open lights, smoking, and smokers' articles including
13 matches, are prohibited in mines where electric or safety
14 lamps are used. No person shall at any time enter such
15 mines with or carry therein any matches, pipes, cigars,
16 cigarettes, or any device for making lights or fire not
17 authorized or approved. In all such mines the operator
18 shall at frequent intervals search, or cause to be searched,
19 any person, including his clothing and material belong-
20 ings, entering or about to enter the mine, or inside the
21 mine, to prevent such person from taking or carrying
22 therein any of the above mentioned articles.

23 No person shall at any time carry into any mine any
24 intoxicants, or enter any mine while under the influence
25 of intoxicants.

2 Sec. 58. *Fire Protection.*—Suitable fire protection shall
3 be provided at surface installations of fans, shops, tipples
4 and preparation plants, substations, hoist rooms and com-
5 pressor stations.

6 Suitable underground fire protection shall be provided
7 at stationary substations and compressor stations, shops,
8 pumps, doors, transformer stations, battery charging sta-
9 tions, where oil and grease is stored, at conveyor loading
10 or discharge points, and strategic points along rubber
11 belt lines, stables, and on active working sections.

12 Rock dust in quantities of five hundred pounds or more
13 shall be considered suitable for fire protection at the
14 above mentioned underground locations, except that a
15 fire extinguisher suitable for the hazards present shall
16 be provided as additional protection at underground
17 shops, permanent substations, compressor stations, bat-
18 tery charging stations and transformer stations.

19 Mine openings, where there is danger of fire entering
20 the mine, shall have adequate protection against surface
fires or dangerous volumes of smoke entering the mine.

 Sec. 59. *Stable in Mines.*—No operator, agent or mine
2 foreman shall provide a horse or mule stable inside of
3 any mine unless space is excavated in solid strata of rock,
4 slate or coal. If excavated in the coal seam, the wall
5 shall be built of brick, stone or concrete not less than four
6 inches in thickness, or of steel plates, and shall be built
7 from the bottom slate to the roof. No wood or other
8 combustible material shall be used in the construction
9 of the inside of the stable. The air current used for the
10 ventilation of the stable shall not be intermixed with the
11 air current used for ventilating any other portion of the
12 mine, but shall be conveyed directly to the return air
13 current. No open lights shall be permitted in any stable
14 in any mine. No hay or straw shall be taken into any
15 mine, unless pressed or made up in compact bales, and
16 shall be transported from the surface to any underground
17 location in incombustible closed cars, which shall be kept
18 in a storehouse built apart from the stable, constructed
19 in the same manner as the stable. Under no circumstances

20 shall may be stored in the stable. All refuse and waste
21 shall be removed from the stable and shall not be allowed
22 to accumulate in the mine.

Sec. 60. *First-aid Equipment.*—In every mine where
2 not more than fifty men are employed underground, it
3 shall be the duty of the operator thereof to keep always
4 on hand at the mine two properly constructed stretchers,
5 two woolen and waterproof blankets, and all necessary
6 requisites; and for each additional fifty men so employed,
7 one additional stretcher and equipment as above specified
8 shall be furnished. Such material shall be provided on
9 the surface and at strategic locations underground near
10 the working section. No first-aid material shall be re-
11 moved or diverted, without authorization, except in case
12 of accident in or about the mine.

Sec. 61. *Mine Openings or Outlets; Roadways; Hoisting
2 Equipment at Shaft Outlets; Limitation of Section.*—No
3 operator or mine foreman of any coal mine shall employ
4 any person to work in such mine, or permit any persons
5 to be in the mine for the purpose of working therein,
6 unless they are in communication with at least two open-
7 ings, or outlets, to each seam, separated by natural strata,
8 such openings to be not less than three hundred feet
9 apart, if the mine be worked by shaft; if the mine be
10 worked by shaft and slope such openings shall be sepa-
11 rated by one hundred feet of natural strata; and not less
12 than fifty feet apart at the outlets, if worked by slope
13 or drift; but this requirement of a distance of three hun-
14 dred feet between openings or outlets to shaft mines
15 shall not apply where such openings or outlets have been
16 made prior to the effective date of this article. To each
17 of the outlets there shall be provided from the interior
18 of the mine a safe and available roadway, properly
19 drained, which shall at all times, while the mine is in
20 operation, be kept free from all obstructions that might
21 prevent travel thereon in case of an emergency. If either
22 of the outlets be by shaft, it shall be fitted with safe and
23 available appliances, such as stairs or hoisting machinery,
24 which shall at all times when men are underground be
25 kept in order and ready for immediate use, whereby per-

26 sons employed in the mine may readily escape in case of
27 accident.

28 This section shall not apply to any mine while work is
29 being prosecuted with reasonable diligence in making
30 communication between outlets, necessary repairs, or re-
31 moving obstructions, so long as not more than twenty
32 persons are employed at any one time in the mine; neither
33 shall it apply to any mine, or part of a mine, in which
34 a second outlet has been rendered unavailable by reason
35 of the final robbing of pillars, preparatory to abandon-
36 ment, so long as not more than twenty persons are em-
37 ployed therein at any one time; but before a limited
38 number of men are so permitted to work, approval of
39 the necessity therefor shall be obtained from the depart-
40 ment of mines.

Sec. 62. *No Mine to Be Opened or Reopened Without
2 Prior Approval of Director of Department of Mines.*—
3 After the effective date of this article, no mine shall be
4 opened or reopened unless prior approval has been ob-
5 tained from the director of the department of mines,
6 which approval shall not be unreasonably withheld. The
7 operator shall pay for such approval a fee of five dollars,
8 which payment shall be tendered with the operator's
9 application for such approval.

Sec. 63. *Survey on Closing of Mine.*—When any coal
2 mine is worked out, or is about to be abandoned or
3 indefinitely closed, the operator of the same shall make or
4 cause to be made a final survey, where not already made,
5 of all parts of such mine, and the results of the same shall
6 be duly extended on all maps of the mine and copies
7 thereof, so as to show all excavations and the most
8 advanced workings of the mine and their exact relation
9 to the boundary or section lines on the surface, and such
10 abandoned mines shall be properly fenced off.

Sec. 64. *Mining Close to Abandoned Workings.*—Any
2 operator working up to an abandoned coal mine may be
3 permitted to work to his property line, if approved by
4 the director of the department of mines, but in such cases
5 precaution must be taken as provided in this article.

2 Sec. 65. *Explosion or Accident; Investigation by Depart-*
3 *ment of Mines.*—Whenever, by reason of any explosion
4 or other accident in or about any coal mine or the
5 machinery connected therewith, loss of life or serious
6 personal injury shall occur, it shall be the duty of the
7 superintendent of the mine, and in his absence, the mine
8 foreman in charge of the mine, to give immediate notice
9 to the director of the department of mines and the in-
10 spector of the district, stating the particulars of such
11 accident. If anyone is killed, the inspector shall imme-
12 diately go to the scene of such accident and make such
13 suggestions and render such assistance as he may deem
14 necessary for the future safety of the men, and investigate
15 the cause of such explosion or accident and make a record
16 thereof which he shall preserve with the other records
17 of his office, the cost of such records to be paid by the
18 department of mines, and a copy shall be furnished the
19 operator and other interested parties. To enable him to
20 make such investigations, he shall have the power to
21 compel the attendance of witnesses and to administer
22 oaths or affirmations. The director of the department of
23 mines shall have the right to appear and testify and to
24 offer any testimony that may be relevant to the question
and to cross-question witnesses.

2 Sec. 66. *Written Report of Accidents.*—Whenever any
3 accident occurs in or about any coal mine to any employee
4 or person connected with the mining operation, resulting
5 in personal injury or death, the operator shall, within
6 twenty-four hours, report the same in writing to the
7 director of the department of mines and to the district
8 mine inspector of the district in which the accident occurs,
9 giving full details thereof upon forms furnished by the
department of mines.

2 Sec. 67. *Scene of Accident; Preservation of Evidence.*—
3 Following a mine accident resulting in the death of one
4 or more persons and following any mine disaster, the
5 evidence surrounding such occurrence shall not be dis-
6 turbed after recovery of bodies or injured persons until
an investigation by the department of mines has been

7 completed: *Provided, however,* That sufficient wreckage
8 or debris may be moved to allow recovery work after
9 disasters or continued general operation of the mine
10 following fatalities not caused by mine fires or mine
11 explosions.

Sec. 68. *Fire in or About Mine; Notification of Director
2 and District Mine Inspector.*—The operator or mine fore-
3 man, upon the discovery of fire in or about a mine, shall
4 immediately notify the director of the department of
5 mines and the district mine inspector in whose district
6 the mine is located.

WEIGHING OR MEASURING COAL

Sec. 69. *Weighing and Measuring Coal; Appliances;
2 Testing Correctness Thereof.*—It shall be the duty of
3 every operator who compensates any employees by
4 weight or measure of coal mined to provide scales or
5 measures and whatever else may be necessary to cor-
6 rectly weigh or measure such coal.

7 It shall be the duty of the commissioner of labor of the
8 the state of West Virginia, upon the reasonable request
9 of any operator of a mine or of two or more miners work-
10 ing therein, to cause such mine to be visited by one of
11 his deputies for the purpose of testing such scales or
12 measures.

Sec. 70. *Marking and Weighing Cars Used in Hauling
2 Coal.*—At any mine where employees are paid on the
3 basis of weight or measure, each car used for removal of
4 coal shall be numbered and plainly marked. Where coal
5 mining is paid for on the basis of weight, every car so
6 used shall be weighed and the weight thereof shall be
7 plainly marked thereon. Where coal mining is paid for
8 on the basis of measure, every car so used shall be plainly
9 marked with the number of bushels of coal such car will
10 hold when loaded to its capacity. No car shall be used
11 for such purposes until the provisions of this section are
12 complied with.

2 *Sec. 71. Weighing Coal Before Screening; Payment for*
3 *Coal.*—All coal mined and paid for by weight shall be
4 weighed before it is screened, and shall be paid for
5 according to the weight so ascertained, at such price per
6 ton as may be agreed upon by the operators and miners
7 who mined the same. All coal mined and paid for by
8 measure shall be paid for according to measure or number
9 of bushels marked upon cars in which it is removed from
10 the mine, and before it is screened, and the price paid for
11 each measure or bushel so ascertained shall be such as
 may be agreed upon as aforesaid.

2 *Sec. 72. Weighman; Checkweighman; Employment;*
3 *Oath.*—At every mine where mining of coal is paid for
4 by weight or measure, the operator shall employ a
5 weighman, and the miners working in such mine may
6 employ a checkweighman as provided by general law,
7 and the two so employed shall supervise the weighing
8 of each car while empty, and the weighing of the same
9 when loaded with coal so paid for by weight, or the
10 measurement of such coal, as the case may be. Where
11 such checkweighman is employed by the miners, the
12 operator shall furnish such checkweighman with a check
13 or number and pay him for all coal placed to his check
14 or number in the same manner as other miners are paid.
15 If the miners fail to employ a checkweighman, then the
16 weighman employed by the operator shall supervise
17 weighing and measuring. All weighmen and check-
18 weighmen, before entering upon the discharge of their
19 duties, shall take an oath or affirmation to honestly and
20 impartially perform the duties of such employment and
21 do equal and exact justice between employer and
 employees to the best of their judgment, skill and ability.

22 Where a weighman is mutually selected by a majority
23 of the miners working in a mine and the operator, it shall
24 not be necessary to employ a checkweighman. Whenever
25 either of the parties to such an agreement shall become
26 dissatisfied with such weighman, they may dismiss him
27 on ten days' notice.

GENERAL PROVISIONS

Sec. 73. *Reopening Old or Abandoned Mine.*—No person, without first giving to the director of conservation ten days' written notice thereof, shall reopen for any purpose any old or abandoned mine wherein water or mine seepage has collected or become impounded or exists in such manner or quantity that upon the opening of such mine such water or seepage may drain into any stream or watercourse. Such notice shall state clearly the name or names of the owner or owners of the mine proposed to be opened, its exact location, and the time of the proposed opening thereof.

Upon receipt of any such notice, the director of conservation shall have his representative present at the mine at the time designated in the notice for such opening, who shall have full supervision of the work of opening such mine with full authority to direct said work in such manner as to him seems proper and necessary to prevent the flow of mine water or seepage from such mine in such manner or quantity as will kill or be harmful to the fish in any stream or watercourse into which such mine water or seepage may flow directly or indirectly.

Sec. 74. *Annual Report By Operator of Mine; Owner's Report in Case of Sale.*—The operator of every coal mine shall annually, during the month of January, mail or deliver to the director of the department of mines a report for the preceding calendar year. Such report shall state the name of the operator, the quantity of coal mined, and such other information not of a private nature, as may be required by the director of the department of mines. Forms for such reports shall be furnished by the director of the department of mines. Whenever any operator of a coal mine shall transfer the ownership thereof, such operator shall, within thirty days, report such transfer to the director of the department of mines, together with a statement of the tons of coal produced at such mine during the current calendar year.

Sec. 75. *Examinations to Determine Compliance With Permits.*—Whenever permits are issued by the depart-

3 ment of mines, frequent examination shall be made by
4 the mine inspector during the tenure of the permit to
5 determine that the requirements and limitations of the
6 permit are complied with.

2 *Sec. 76. Compliance With Article Suspended Where*
3 *Required Equipment Unobtainable; Allowance for Plan-*
4 *ning and Instituting Changes.*—Whenever any equipment
5 or supplies required by this article, including rock-dusting
6 machines, flame safety lamps, and permissible electric
7 equipment, are unobtainable in the normal course of busi-
8 ness, compliance with the requirements of this article
9 with respect thereto is suspended so long as such items
10 remain unobtainable. Due allowance shall also be made
11 for planning, institution of change procedures, and in-
stallation of new equipment.

2 *Sec. 77. Intimidation of Workmen.*—No person or per-
3 sons, or combination of persons, shall, by force, threats,
4 menaces or intimidations of any kind, prevent or attempt
5 to prevent from working in or about any mine any person
6 or persons who have the lawful right to work in or about
7 the same, and who desire so to work; but this provision
8 shall not be so construed as to prevent any two or more
9 persons from associating together under any name they
10 may desire, for any lawful purpose, or from using moral
11 suasion or lawful argument to induce any one not to work
in and about any mine.

2 *Sec. 78. Penalties.*—Any person who shall wilfully
3 violate sections two, seven, twelve, nineteen, twenty-four,
4 thirty-three, fifty-seven, fifty-eight, sixty, sixty-two,
5 seventy, seventy-one, seventy-four, seventy-five or
6 seventy-seven of this article shall be fined not less than
ten nor more than five hundred dollars

2 *Sec. 75. Examinations to Determine Compliance With*
3 *provisions of this article shall be construed as separable*
4 *and severable, and should any of the provisions, sentences,*
5 *clauses, or parts thereof be construed or held unconstitu-*
6 *tional or for any reason be invalid, the remaining pro-*
visions of this article shall not be thereby affected.

Article 2-b. Auger Mining.**Section**

1. Permit required.
2. Duties of operator.
3. Reports.

Section 1. *Permit Required.*—No auger mining shall be conducted by any person without securing a permit issued by the department of mines. Such permit shall be on a form prescribed by the director of the department of mines. Such permit shall not be unreasonably withheld. The operator shall pay for such permit a fee of five dollars, which payment shall be tendered with the operator's application for such permit.

Sec. 2. *Duties of Operator.*—It shall be the duty of the operator to see that all work is performed in a safe manner; equipment where necessary shall be properly guarded; high walls shall be carefully scaled; and loose and overhanging materials taken down.

If, after auger mining is completed, the operator decides to deep mine the remaining area, he shall comply with the provisions of article two that are applicable.

Sec. 3. *Reports.*—The operator of any auger mining shall furnish to the director of the department of mines the reports required in article two of this chapter.

CHAPTER 14

(Senate Bill No. 2—By Mr. Martin)

AN ACT to amend article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto three new sections, to be designated sections twenty-two, twenty-three and twenty-four, relating to public service districts for water and sewerage services; providing for the validation, ratification, approval and confirmation of certain proceedings heretofore taken by county courts of this state relative to the creation and continuance of public service districts pursu-

ant to the provisions of said chapter sixteen of said code and the subsequent inclusion of additional territory to existing public service districts by such county courts and the appointment of members of public service boards; authorizing the appointment of successors to members of certain public service boards; and the validation, ratification, approval and confirmation of certain acts and proceedings of public service boards prior to the date this act takes effect, and authorizing the acceptance by any public service district of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

[Passed February 1, 1958; in effect from passage. Became a law without the approval of the Governor.]

Article 13-a. Public Service Districts for Water and Sewerage Services.

Section

22. Validation of prior proceedings by county courts for creation of districts, inclusion of additional territory and appointment of members of district boards.
23. Validation of acts and proceedings of public service boards.
24. Acceptance of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

Be it enacted by the Legislature of West Virginia:

That article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto three new sections, to be designated sections twenty-two, twenty-three and twenty-four, to read as follows:

- Section 22. *Validation of Prior Proceedings by County
2 Courts for Creation of Districts, Inclusion of Additional
3 Territory and Appointment of Members of District Boards.*
4 —All acts and proceedings taken by any county court of
5 this state purporting to have been carried out under the
6 provisions of this article which have been taken, prior to
7 the date this act takes effect, for the purpose of creating
8 public service districts or for the purpose of subsequent
9 inclusion of additional territory to existing public service

10 districts, after notice published by any such county court
11 having territorial jurisdiction thereof of its intention to
12 include such additional territory after hearing thereon,
13 are hereby validated, ratified, approved and confirmed
14 notwithstanding any other lack of power (other than
15 constitutional) of any such county court to create such
16 public service districts or to include additional territory
17 to existing public service districts or irregularities (other
18 than constitutional) in such proceedings, relating
19 to the appointment and qualification of more than
20 three members to the board of any such public serv-
21 ice district or the subsequent appointment of successors
22 of any or all of such members, notwithstanding that no
23 city, incorporated town or other municipal corporation
24 having a population in excess of three thousand is in-
25 cluded within the district, and the appointment and quali-
26 fication of such members, and further including any ir-
27 regularities in the petition for the creation of any public
28 service district, irregularities in the description of the area
29 embraced by such district, and irregularities in the notice
30 and publication of notice for the hearing creating such
31 district, prior to the date this act takes effect is hereby
32 validated, ratified, approved and confirmed; and, further,
33 in such cases where more than three members of the
34 board of such districts have been so appointed prior to the
35 date this act takes effect then such county court shall ap-
36 point, and they are hereby authorized and empowered to
37 appoint, successors to such members in the manner as
38 otherwise provided by this article.

Sec. 23. *Validation of Acts and Proceedings of Public*
2 *Service Boards.*—All acts and proceedings taken by any
3 public service board the members of which were ap-
4 pointed, prior to the date this act takes effect, by any
5 county court of this state having territorial jurisdiction
6 thereof, are hereby validated, ratified, approved and con-
7 firmed, as to defects and irregularities which may other-
8 wise exist on account of their appointment and qualifi-
9 cation.

Sec. 24. *Acceptance of Loans or Temporary Advances*
2 *from, and Contracts and Agreements with, Federal Agen-*

3 *cies or Private Parties.*—Any public service district
4 created pursuant to the provisions of this article is author-
5 ized and empowered to accept loans or grants or tempo-
6 rary advances for the purpose of paying part or all of the
7 cost of construction or acquisition of water or sewerage
8 systems, or both, and the other purposes herein authorized,
9 from the United States of America or any federal or
10 public agency or department of the United States or any
11 private agency, corporation or individual, which tempo-
12 rary advances may be repaid out of the proceeds of the
13 bonds authorized to be issued under the provisions of
14 this article and to enter into the necessary contracts and
15 agreements to carry out the purposes hereof with the
16 United States of America or any federal or public agency
17 or department of the United States, or with any private
18 agency, corporation or individual.

CHAPTER 15

(Senate Bill No. 36—By Mr. Bean, Mr. President, and Mr. Carrigan)

AN ACT to amend article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections twenty-five and twenty-six, and by adding thereto a new section, to be designated section twenty-five-a, relating to permitting county courts to expend certain funds for participation in any equalization and revaluation program.

[Passed February 4, 1958; in effect from passage. Approved by the Governor.]

Article 8. Levies.

Section

25. Funds expended only for purposes for which raised.
- 25-a. Right of county court to expend surplus funds for equalization and revaluation.
26. Unlawful expenditures by local fiscal body.

Be it enacted by the Legislature of West Virginia:

That article eight, chapter eleven of the code of West Vir-

ginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting sections twenty-five and twenty-six, and by adding thereto a new section, to be designated section twenty-five-a, to read as follows:

Section 25. — *Funds Expended Only for Purposes for Which Raised.*—Except as otherwise provided in this article, boards or officers expending funds derived from the levying of taxes shall expend the funds only for the purposes for which they were raised.

Sec. 25-a. — *Right of County Court to Expend Surplus Funds for Equalization and Revaluation.*—In order to permit county courts to participate more fully in an equalization and revaluation program, which equalization and revaluation would result in increased local support for the public schools, any county court having funds in excess of the amount needed for the purpose for which such funds were raised, may expend such funds for any equalization and revaluation program upon the written approval of the state tax commissioner, provided that under no circumstances shall a county court expend money or incur obligations in excess of the funds available for current expenses.

Sec. 26.—*Unlawful Expenditures by Local Fiscal Body.*
—Except as provided in the next preceding section a local fiscal body shall not expend money or incur obligations:
(1) In an unauthorized manner;
(2) For an unauthorized purpose;
(3) In excess of the amount allocated to the fund in the levy order;
(4) In excess of the funds available for current expenses.

CHAPTER 16

(Senate Bill No. 37—By Mr. Bean, Mr. President)

AN ACT to amend and reenact section five-b, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to privilege tax on certain carrier corporations.

[Passed February 4, 1958; in effect July 1, 1958. Approved by the Governor.]

Article 12-a. Privilege Tax on Certain Carrier Corporations.

Section

5-b. Definitions; reduction allowed in tax due; how computed.

Be it enacted by the Legislature of West Virginia:

That section five-b, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 5-b. *Definitions; Reduction Allowed in Tax Due; How Computed.*—This bill is enacted for the purpose of providing revenue for the administration of Senate Bill No. 34, regular session, one thousand nine hundred fifty-eight. When used in this section the phrase “normal tax” shall mean the tax computed by the application of rates against intrastate gross income, pro-rated gross income, assessed value of all property in West Virginia and by pro-rated net income as set forth in sections two, three, four or five, inclusive, of this article.

When used in this section the term “surtax” shall mean the tax computed by the application of the tax rate as set forth in section five-a of this article.

When used in this section the phrase “total net balance of taxes due” shall mean the total of the normal tax and surtax less exemption at the rate of fifty dollars annually or at the rate of four dollars and sixteen cents per month for the period actually engaged in business.

For the period commencing July one, one thousand nine hundred sixty, and thereafter, a reduction of five percent of the total net balance of taxes due is allowed. The normal tax shall be computed by the application of rates against intrastate gross income, pro-rated gross income, assessed value of all property in West Virginia, and by pro-rated net income as set forth in sections two, three, four or five, inclusive, of this article. The surtax shall be computed by the application of the tax rate as set forth in section five-a of this article. For the period commencing July one, one thousand nine hundred sixty, the total net balance of

30 taxes due shall be reduced by the five percent credit al-
31 lowed herein. The total net balance of taxes due, for the
32 period commencing on the aforesaid date, reduced by the
33 five percent credit is the amount of tax payable.

CHAPTER 17

(Senate Bill No. 35—By Mr. Bean, Mr. President)

AN ACT to amend and reenact section three-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to business and occupation tax.

[Passed February 4, 1958; in effect July 1, 1958. Approved by the Governor.]

Article 13. Business and Occupation Tax.

Section

3-b. Definitions; reduction allowed in tax due; how computed.

Be it enacted by the Legislature of West Virginia:

That section three-b, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 3-b. *Definitions; Reduction Allowed in Tax*

2 *Due; How Computed.*—This bill is enacted for the pur-
3 pose of providing revenue for the administration of Sen-
4 ate Bill No. 34, regular session, one thousand nine hun-
5 dred fifty-eight. When used in this section the phrase
6 “normal tax” shall mean the tax computed by the ap-
7 plication of rates against values or gross income as set
8 forth in sections two-a to two-j, inclusive, of this article.

9 When used in this section the term “surtax” shall mean
10 the tax computed by the application of the tax rate as
11 set forth in section three-a of this article.

12 When used in this section the phrase “total net balance
13 of taxes due” shall mean the total of the normal tax in

14 those classifications under which only a normal tax is
15 imposed, and the total of the normal tax and the surtax
16 in those classifications under which both a normal tax
17 and surtax is imposed, and the combined total of all taxes
18 when the tax return shows taxes due under more than
19 one classification as set forth in sections two-a to two-j,
20 inclusive, of this article, and section three-a of this article
21 less exemption at the rate of fifty dollars annually or at
22 the rate of four dollars and sixteen cents per month for
23 the period actually engaged in business.

24 For the period commencing July one, one thousand
25 nine hundred sixty, and thereafter, a reduction of five
26 per cent of the total net balance of taxes due is allowed.
27 The normal tax shall be computed by the application of
28 rates against values or gross income as set forth in sec-
29 tions two-a to two-j, inclusive, of this article. The surtax
30 shall be computed by the application of the tax rate as
31 set forth in section three-a of this article. For the period
32 commencing July one, one thousand nine hundred sixty,
33 the total net balance of taxes due shall be reduced by the
34 five per cent credit allowed herein. The total net balance
35 of taxes due, for the period commencing on the aforesaid
36 date, reduced by the five per cent credit is the amount of
37 the tax payable.

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CHAPTER 18

(Senate Bill No. 5—By Mr. Carrigan and Mr. Traubert)

AN ACT to amend and reenact section two-b, article seventeen, and section two, article eighteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the imposition, collection and disposition of an additional tax on the sale of cigarettes, and upon the use, consumption or storage of cigarettes in this state; providing for the extension of the present tax thereon beyond June thirty, one thousand nine hundred fifty-eight, and declaring the purpose thereof.

Article**17. Excise Tax on Sale of Cigarettes.****18. Excise Tax on Use, Consumption or Storage of Cigarettes.**

Be it enacted by the Legislature of West Virginia:

That section two-b, article seventeen, and section two, article eighteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Article 17. Excise Tax on Sale of Cigarettes.**Section****2-b. Additional cigarette tax for support of schools.**

Section 2-b. *Additional Cigarette Tax for Support of Schools.*—For the purpose of providing additional revenue for the support of free schools, there is hereby levied and imposed, on and after midnight of the last day of June, one thousand nine hundred fifty-eight, in addition to the taxes imposed by sections two and two-a of this article, an additional excise tax of one and one-half cents on each ten cigarettes, or fractional part thereof, sold within this state. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular excise tax on the sale of cigarettes shall be applicable to the levy, imposition and collection of such additional tax. Notwithstanding other provisions of this article to the contrary, all moneys received from the additional tax imposed by this section, less deductions allowed by this article for refunds and for costs of administration and operation, shall be paid by the tax commissioner into the general school fund, to be used solely for the support of free schools: *Provided, however,* That the additional one-half cent tax on each ten cigarettes or fractional part thereof imposed or levied by this section shall be suspended on the last day of June, one thousand nine hundred sixty-one.

Article 18. Excise Tax on Use, Consumption or Storage of Cigarettes.**Section****2. Levy of tax on cigarettes.**

Section 2. *Levy of Tax on Cigarettes.*—For the purpose of providing revenue for the general fund of this state an

3 excise tax is hereby levied, on and after midnight of the
4 last day of June, one thousand nine hundred fifty-eight, on
5 the use, consumption or storage of cigarettes by consum-
6 ers in this state at the rate of two and one-half cents on
7 each ten cigarettes or fractional part thereof: *Provided,*
8 *however,* That the tax shall not apply if the tax levied in
9 article seventeen of this chapter has been paid: *Provided*
10 *further,* That the additional one-half cent tax on each ten
11 cigarettes or fractional part thereof imposed or levied by
12 this section shall be suspended on the last day of June, one
13 thousand nine hundred sixty-one.

CHAPTER 19

(Senate Bill No. 39—By Mr. Hedrick and Mr. Marchand)

AN ACT to amend article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections one, two, three, five and six; and by enacting six new sections, to be designated sections four-a, four-b, five-a, five-b, five-c and seven-a, all relating to the soft drinks tax.

[Passed February 5, 1958; in effect from passage. Approved by the Governor.]

Article 19. Soft Drinks Tax.

Section

1. Definitions.
2. Excise tax on bottled soft drinks and syrups; disposition thereof.
3. Soft drink permits required.
- 4-a. Cancellation and removal of stamps.
- 4-b. Disposition of unused crowns; penalty for violation.
5. Purchase of tax stamps or tax crowns; discounts and commissions; provisions for credit.
- 5-a. Keeping of records; inspections and audits.
- 5-b. Penalties for late filing.
- 5-c. Assessment; collection by action or suit.
6. Rules and regulations.
- 7-a. Seizure and sale of soft drink syrups by commissioner; forfeiture; collection of tax.

Be it enacted by the Legislature of West Virginia:

That article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be

amended by amending and reenacting sections one, two, three, five and six; and by enacting six new sections, to be designated sections four-a, four-b, five-a, five-b, five-c and seven-a, all to read as follows:

Section 1. *Definitions.*—As used in this article:

2 (1) "Bottled soft drinks" shall include any and all
3 non-alcoholic beverages, whether carbonated or not, such
4 as soda water, ginger ale, coca cola, lime cola, pepsi cola,
5 doctor pepper, root beer, carbonated water, orangeade,
6 lemonade, fruit juice when any plain or carbonated water,
7 flavoring or syrup is added, or any and all preparations
8 commonly referred to as "soft drinks" of whatever kind,
9 which are closed and sealed in glass, paper, or any other
10 type of container or bottle, whether manufactured with
11 or without the use of any syrup. The term "bottled soft
12 drinks" shall not include fluid milk to which no flavoring
13 has been added, or natural undiluted fruit juice or vege-
14 table juice.

15 (2) "Soft drink syrups" shall include the compound
16 mixture or the basic ingredients, whether dry or liquid,
17 usable in making, mixing or compounding soft drinks by
18 the mixing thereof with carbonated or plain water, ice,
19 fruit, milk or any other product suitable to make a soft
20 drink among such syrups being such products as coca cola
21 syrup, chero cola syrup, pepsi cola syrup, doctor pepper
22 syrup, root beer syrup, nu-grape syrup, lemon syrup, va-
23 nilla syrup, chocolate syrup, cherry smash syrup, rock
24 candy syrup, simple syrup or any other prepared syrups
25 sold or used for the purpose of mixing soft drinks, as well
26 as all powder bases prepared for the purpose of mixing
27 soft drinks, including but not limited to such soft drinks
28 as kool-aid, oh boy drink, tip top and miracle aid: *Provid-*
29 *ed, however,* That powdered mixes prepared for domestic
30 cooking or baking only shall be excluded therefrom.

31 (3) "Simple syrup" shall mean the making, mixing,
32 compounding or manufacturing, by dissolving sugar and
33 water or any other mixture that will create simple syrup
34 to which may or may not be added concentrates or
35 extracts.

36 (4) "Person" shall mean and include an individual,
37 firm, partnership, association or corporation.

38 (5) "Wholesale dealer" includes only those persons
39 who sell any bottled soft drink or soft drink syrup to re-
40 tail dealers for the purpose of resale.

41 (6) "Retail dealer" includes every person other than
42 a wholesale dealer mixing, making, compounding or man-
43 ufacturing any drink from a soft drink syrup or powder
44 base.

45 (7) "Distributor" shall mean any person who manu-
46 factures, bottles, produces or purchases for sale to retail
47 dealers any bottled soft drink or soft drink syrup.

48 (8) "Commissioner" means the state tax commission-
49 er, and where the meaning of the context requires, all
50 deputies and employees duly authorized by him.

Sec. 2. *Excise Tax on Bottled Soft Drinks and Syrups;*
2 *Disposition Thereof.*—For the purpose of providing rev-
3 enue for the construction, maintenance and operation of
4 a four-year school of medicine, dentistry and nursing of
5 West Virginia university, an excise tax is hereby levied
6 and imposed on and after midnight of the last day of June,
7 one thousand nine hundred fifty-one, upon the sale, use,
8 handling or distribution of all bottled soft drinks and all
9 soft drink syrups, whether manufactured within or with-
10 out this state, as follows:

11 (1) On each bottled soft drink, a tax of one cent on
12 each sixteen fluid ounces, or fraction thereof, contained
13 therein.

14 (2) On each gallon of soft drink syrup, a tax of eighty
15 cents, and in like ratio on each part gallon thereof, and on
16 each ounce of dry mixtures used for making soft
17 drinks, a tax proportionate to that levied on soft drink
18 syrup, in a ratio to be determined by the commission-
19 er.

20 Any person manufacturing or producing within this
21 state any bottled soft drink or soft drink syrup for sale
22 within this state and any distributor, wholesale dealer or
23 retail dealer or any other person who is the original con-

24 signee of any bottled soft drink or soft drink syrup manu-
25 factured or produced outside this state, or who brings such
26 drinks or syrups into this state, shall be liable for the
27 excise tax hereby imposed. The excise tax hereby imposed
28 shall not be collected more than once in respect to any
29 bottled soft drink or soft drink syrup manufactured, sold,
30 used or distributed in this state.

31 All revenue collected by the commissioner under the
32 provisions of this article, less such costs of administration
33 as are hereinafter provided for, shall be paid by him into
34 a special medical school fund, which is hereby created in
35 the state treasury, to be used solely for the construction,
36 maintenance and operation of a four-year school of medi-
37 cine, dentistry and nursing, as otherwise provided by law.

Sec. 3. *Soft Drink Permits Required.*—On and after the
2 first day of July, one thousand nine hundred fifty-one, it
3 shall be unlawful for any person to manufacture, bottle,
4 import, distribute or sell in this state any bottled soft
5 drink or any soft drink syrup without having first ob-
6 tained from the commissioner a soft drink permit as pro-
7 vided in this section. Each wholesale dealer and each
8 distributor shall each year obtain from the commissioner
9 a soft drink permit for each place of business owned or
10 operated by him within the state and shall pay for each
11 permit an annual fee of ten dollars. Each wholesale
12 dealer and each distributor who sells or distributes any
13 such drink or syrup within the state, but who does not
14 own or operate any place of business within the state, shall
15 likewise obtain each year from the commissioner a soft
16 drink permit and shall pay therefor a fee of ten dollars.
17 Each retail dealer manufacturing and/or purchasing un-
18 stamped syrups shall each year obtain from the commis-
19 sioner a soft drink permit for each place of business own-
20 ed or operated by him within the state and shall pay for
21 each permit an annual fee of five dollars. The commis-
22 sioner may suspend or, after a hearing, revoke any soft
23 drink permit whenever the holder thereof has failed
24 to comply with any of the provisions of this article or any
25 rules or regulations made and promulgated by him as pro-
26 vided herein.

2 *Sec. 4-a. Cancellation and Removal of Stamps.*—Any
3 person subject to the tax imposed by this article who af-
4 fixes a soft drink stamp to a container shall be required
5 to immediately cancel the stamp by writing or marking
6 initials thereon and the date upon which the stamp was
7 affixed. When any container to which a stamp has been af-
8 fixed is emptied, the person emptying the same or on
9 whose behalf the same has been emptied shall be required
to immediately remove or deface the tax stamp thereon.

2 *Sec. 4-b. Disposition of Unused Crowns; Penalty for*
3 *Violation.*—Unused tax crowns upon which the tax im-
4 posed by this article has not been paid and which the
5 original purchaser has not used and does not intend to
6 use, and which are fit for use, shall be disposed of in the
7 following manner only:

7 (1) By returning same to the manufacturer thereof
8 and receiving from such manufacturer a certificate which
9 shall indicate the name of the person returning the
10 crowns, the date of return and the number and denomina-
11 tions of crowns returned; or

12 (2) By transferring such crowns to any person and
13 receiving in exchange therefor a certificate issued by the
14 commissioner authorizing the transferee to acquire such
15 crowns.

16 Upon receipt of either such certificate the commissioner
17 shall credit the account of the original purchaser in the
18 amount indicated by the certificate.

19 In the event of the disposition of such crowns in a man-
20 ner not authorized by this section, the original purchaser
21 thereof or his estate, and/or any person (whether acting
22 in an official capacity or otherwise) who shall make such
23 unauthorized disposition shall be liable for the amount of
24 tax which the crowns represent; and, in addition, shall
25 be guilty of a misdemeanor and, upon conviction thereof,
26 shall be punished by a fine of five thousand dollars and
27 imprisonment in the county jail for not less than sixty
28 days nor more than one year, in the discretion of the
29 court.

2 *Sec. 5. Purchase of Tax Stamps or Tax Crowns; Dis-*
3 *counts and Commissions; Provisions for Credit.*—The com-
4 missioner is hereby authorized to promulgate rules and
5 regulations governing the design, purchase, sale and dis-
6 tribution of tax stamps and tax crowns required by this
7 article. Manufacturers or distributors of crowns may be
8 required to furnish bond to insure faithful compliance
9 with such regulations. Any person desiring to purchase
10 such crowns shall obtain from the commissioner an au-
11 thorization to do so, which shall specify the number of
12 crowns to be purchased, and upon shipment thereof the
13 manufacturer shall transmit to the commissioner a copy
14 of the invoice of such shipment. The commissioner shall
15 not authorize the purchase of crowns by any person who
16 is in default in the payment of any tax required by this
16 article.

17 The commissioner shall sell the stamps required by this
18 article, or may authorize any sheriff, or any bank or trust
19 company in this state, to sell such stamps as his deputy,
20 and may allow as a commission a fee of one-half of one
21 per cent of the face value of all stamps sold by such
22 deputy. In the sale of such stamps the commissioner shall
23 allow the following discounts: On a sale of less than
24 twenty-five dollars, no discount; on a sale of twenty-five
25 dollars or over and less than fifty dollars, a discount of
26 five per cent; and on a sale of fifty dollars or more, a dis-
27 count of ten per cent.

28 In the case of stamps, the tax imposed by this article
29 shall be paid in advance at the time the stamps are pur-
30 chased. In the case of tax crowns, the tax shall be paid
31 in advance at the time the tax commissioner authorizes
32 the purchase of such tax crowns, unless the purchaser
33 applies for and obtains credit as provided in the following
34 paragraph.

35 Whenever any person applies for an authorization to
36 purchase tax crowns, he may apply for an extension of
37 credit on the tax due with respect to such crowns, and if
38 he files a bond in the form prescribed by the commissioner,
39 with satisfactory corporate surety, in an amount not less
40 than twenty-five per cent more than the tax due with re-

41 spect to the tax crowns to be purchased, the commissioner
42 shall issue the necessary authorization. Any person who
43 obtains such credit shall, on or before the fifteenth day of
44 each month, file with the commissioner on forms pre-
45 scribed by him a return stating the number of tax crowns
46 used by such person during the preceding month, and he
47 shall at the same time pay to the commissioner the tax
48 due on the crowns so used.

49 The commissioner shall allow to each purchaser of tax
50 crowns, whether for cash or credit, a discount of twelve
51 and one-half per cent of the tax value of such tax crowns.
52 Such discount, and the discount allowed on the sale of tax
53 stamps, shall be in lieu of the allowance of any claim for
54 refund by reason of the breakage or destruction of contain-
55 ers stamped or crowned as provided in this article, the
56 spoilation of the soft drinks or syrups, or the loss or de-
57 struction of tax stamps or tax crowns.

Sec. 5-a. *Keeping of Records; Inspections and Audits.*—

2 Every person subject to the provisions of this article shall
3 make such reports and keep such records as may be re-
4 quired by the rules and regulations of the commissioner,
5 and shall permit him to inspect such records and the
6 stocks and supplies on hand at any time. Every such per-
7 son shall be required either to make his records available
8 for inspection within this state or to pay the reasonable
9 expenses of sending an auditor outside the state to inspect
10 and audit such records.

Sec. 5-b. *Penalties for Late Filing.*—If any taxpayer

2 fails to file a return or pay the proper amount of tax with-
3 in the time specified herein, there shall be added to the
4 unpaid tax the amount of the discount to which the tax-
5 payer would have been entitled had he not been delin-
6 quent as a penalty for being delinquent for the first month,
7 or a fraction thereof, and, if the delinquency continues,
8 there shall be a penalty of one per cent of the unpaid tax
9 for each succeeding month, or fraction thereof: *Provided,*
10 *however,* That if the failure to pay was due to reasonable
11 cause, the commissioner may waive or remit the penalties
12 imposed in this section in whole or in part. In addi-

13 tion to the penalties herein provided, the commissioner
14 shall refuse to authorize the purchase of tax stamps or
15 crowns by the delinquent taxpayer.

Sec. 5-c. *Assessment; Collection by Action or Suit.*—If
2 the commissioner believes that the tax imposed by this
3 article has been insufficiently returned, he shall proceed to
4 investigate and determine the tax liability of any taxpay-
5 er and make an assessment therefor.

6 Taxes and penalties due and unpaid may be collected
7 by action in debt, motion for judgment, or other appro-
8 priate remedy, including suit in a justice court.

Sec. 6. *Rules and Regulations.*—The commissioner is
2 hereby authorized to make and promulgate such reason-
3 able rules and regulations as may be necessary to admin-
4 ister the provisions of this article and to insure the collec-
5 tion of the tax imposed hereby.

Sec. 7-a. *Seizure and Sale of Soft Drink Syrups by
2 Commissioner; Forfeiture; Collection of Tax.*—Whenever
3 the commissioner or any of his duly authorized agents
4 shall discover any soft drink syrups, subject to tax as
5 provided by this article and upon which the tax has not
6 been paid as herein required, the commissioner or his duly
7 authorized agent is hereby authorized and empowered
8 forthwith to seize and take possession of such soft drink
9 syrups, which shall thereupon be deemed to be forfeited
10 to the state and the commissioner may within a reason-
11 able time thereafter by a notice posted upon the premises
12 where such seizure was made, or by publication in some
13 newspaper having circulation in the county wherein such
14 seizure is made, at least five days before the day of sale,
15 sell such forfeited soft drink syrups; and from the pro-
16 ceeds of such sale shall collect the tax due thereon to-
17 gether with a penalty of fifty per cent thereof and the
18 cost incurred in such proceedings, and pay the balance, if
19 any, to the person in whose possession such soft drink
20 syrups were found: *Provided, however,* That such seizure
21 and sale shall not be deemed to relieve any person from
22 fine or imprisonment provided herein for violation of any
23 provision of this article. Such sale shall be made in the

24 county where most convenient and economical. All mon-
25 eys collected under the provisions of this section shall be
26 paid into the state treasury and treated as other taxes
27 collected under this article.

CHAPTER 20

(Senate Bill No. 25—By Mr. Bean, Mr. President, and Mr. Carrigan)

AN ACT validating the issuance and sale of Korean veterans' bonus bonds to the board of public works of the state of West Virginia on account of various trust funds of the state, and providing for the deposit in the Korean veterans' bonus sinking fund of all funds for the payment of said bonds.

[Passed January 31, 1958; in effect from passage. Approved by the Governor.]

Korean Veterans Bonus Bonds.

Section

1. Findings and declaration of legislative intent.
2. Award of bonds validated.
3. Deposit of past and future revenues validated.

Be it enacted by the Legislature of West Virginia:

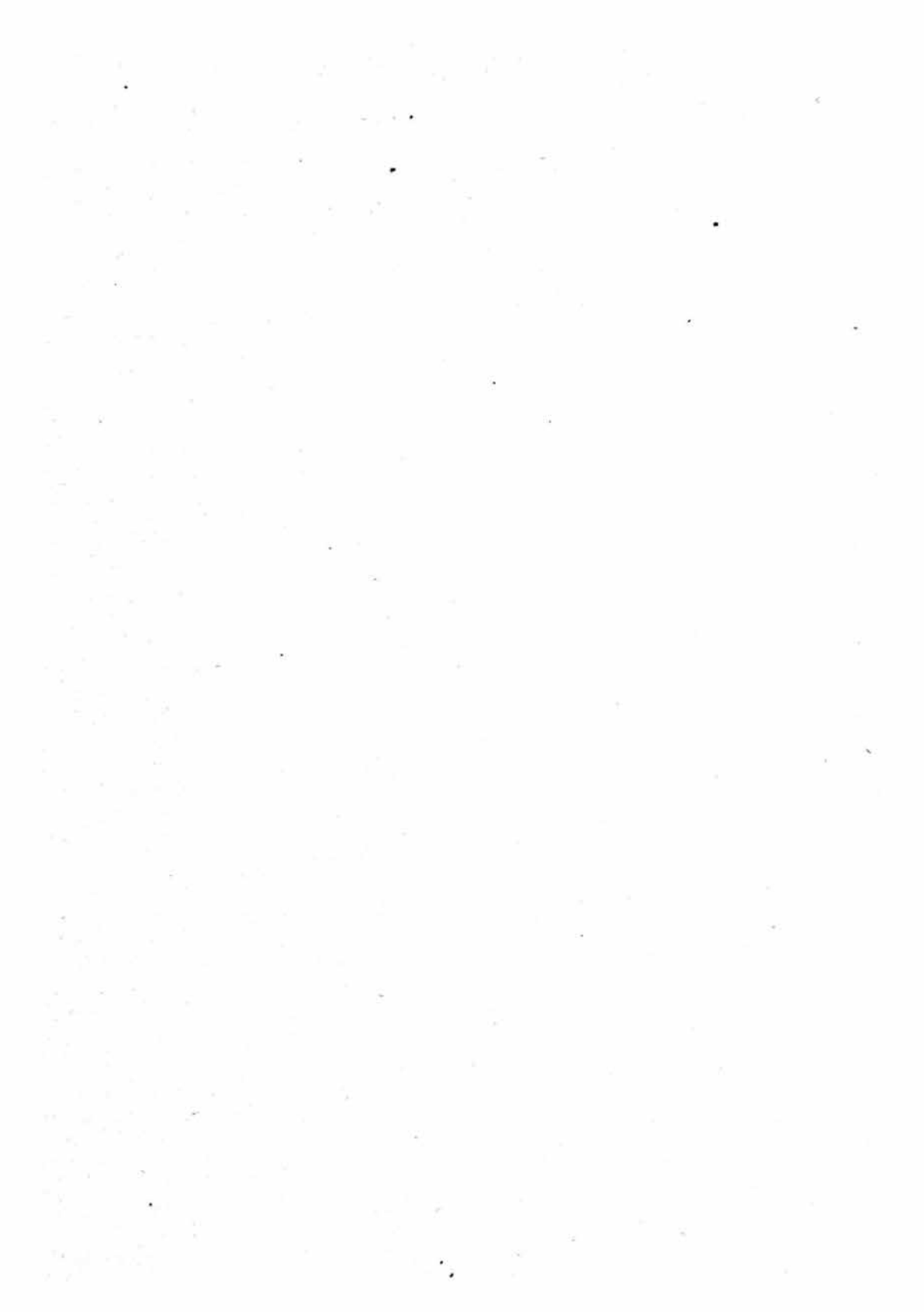
Section 1. *Findings and Declaration of Legislative Intent.*—It is hereby determined and declared as a matter of legislative finding that, pursuant to the authority provided in chapter one hundred sixty-seven, acts of the Legislature, regular session, one thousand nine hundred fifty-seven, as amended by house bill number two, an act of the Legislature, first extraordinary session, one thousand nine hundred fifty-seven, bonds in the total principal amount of eighteen million five hundred thousand dollars, which said bonds were authorized by the "Korean Veterans' Bonus Amendment" to the constitution of the state of West Virginia adopted at the general election held in November, one thousand nine hundred fifty-six, were awarded by the governor to the board of public works of

15 the state of West Virginia for the account of various
16 trust funds of the state, and the revenues derived from
17 charges for alcoholic liquors by the state liquor control
18 commissioner of the state pursuant to section nineteen-a,
19 article three, chapter sixty of the code of West Virginia,
20 one thousand nine hundred thirty-one, as amended, were
21 duly deposited by the state treasurer to the credit of the
22 Korean veterans' bonus sinking fund for the retirement of
23 said bonds.

24 Therefore, as it is deemed advisable and in the best
25 interests of the state, it is the intent of the Legislature to
26 hereby validate the award of said bonds to the board of
27 public works as aforesaid and to validate the deposit of
28 said revenues in the Korean veterans' bonus sinking fund.

Sec. 2. *Award of Bonds Validated.*—The award of bonds
2 in the total principal amount of eighteen million five
3 hundred thousand dollars by the governor to the board
4 of public works for various trust funds of the state, as
5 designated in section one of this act, is hereby validated
6 and confirmed.

Sec. 3. *Deposit of Past and Future Revenues Validated.*
2 —The deposit by the state treasurer of the revenues de-
3 rived from charges for alcoholic liquors by the state
4 liquor control commissioner, as designated in section one
5 of this act, is hereby validated and confirmed; and all such
6 revenues hereafter derived from charges for alcoholic
7 liquors by the state liquor control commission shall, not-
8 withstanding the provisions of any other law or laws to
9 the contrary, be deposited by the state treasurer in the
10 said Korean veterans' bonus sinking fund for and until
11 the retirement of said Korean veterans' bonus bonds.



RESOLUTIONS

(Only resolutions of general interest adopted by the Legislature and the two Houses thereof during the 1958 Regular Session are included in this volume. Resolutions dealing with organization of the Legislature and other routine business, upon which action has been completed, will be found in the Journals of the Session.)

HOUSE CONCURRENT RESOLUTION NO. 3

(By Mr. Craig and Mr. Frazer)

[Adopted January 15, 1958.]

Memorializing the Congress of the United States to take action so as to afford protection to certain small industries of West Virginia.

WHEREAS, West Virginia manufacturers of pottery, glass, ceramics, clothespins, and numerous other small industries are competing constantly with imports of foreign commodities; and

WHEREAS, Said foreign commodities, because of the low cost of foreign labor and the use of inferior material, are sold at such low prices that the aforesaid West Virginia manufacturers are unable to compete with them without some means of protection; and

WHEREAS, The import of said foreign commodities is presently permitted virtually without restriction and without protection to the aforesaid small industries; and

WHEREAS, The present influx of foreign commodities is causing irreparable damage to the aforesaid small industries and can only result in their eventually being driven out of business, which would foster increased and widespread unemployment in West Virginia; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Congress of the United States is hereby requested to take immediate action to afford relief and protection to the aforesaid small industries of West Virginia, through regulation

by tariffs and through such other means as are available to the Congress for the accomplishment of said end; and, be it

Further Resolved, That the Secretary of State is hereby directed to forward attested copies of this concurrent resolution to the President of the United States Senate, the Speaker of the House of Representatives, and to each member of the West Virginia delegation in the Congress of the United States.

HOUSE CONCURRENT RESOLUTION NO. 4

(By Messrs. Zabeau, Garrett, Robertson and White,
of Harrison)

[Adopted January 14, 1958.]

Congratulating the City of Clarksburg on being named one of the All-America Cities in the annual contest co-sponsored by the National Municipal League and Look Magazine.

WHEREAS, The City of Clarksburg has received the unusual distinction of being selected as one of the All-America Cities in the annual contest co-sponsored by the National Municipal League and Look Magazine for the year 1957, and is the only city in West Virginia ever to receive such recognition; and

WHEREAS, This award is given annually to eleven cities in the United States for especially noteworthy civic projects as a result of citizen initiative, such awards being made on the basis of alert, hard-hitting action taken by citizens to meet pressing community problems and push for needed civic improvements; and

WHEREAS, This award was made to the City of Clarksburg because of intelligent and concerted action leading to major accomplishments in the fields of government and civic betterment; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the members of the Fifty-third West Virginia Legislature do hereby congratulate and commend the City of Clarksburg and its citizens upon the actions resulting in this noteworthy recognition; and, be it

Further Resolved, That the Clerk of the House of Delegates transmit a copy of this resolution to the Honorable E. W. James, Mayor of the City of Clarksburg.

HOUSE CONCURRENT RESOLUTION NO. 14

(By Mr. Myles and Mr. Seibert)

[Adopted January 30, 1958.]

Authorizing and directing the Joint Committee on Government and Finance to include in its studies and survey an investigation and study of matters affecting the valuation and assessment of the properties of public service corporations in West Virginia for tax purposes.

WHEREAS, Approximately twenty-five per cent of all property in the State is owned by public service corporations or persons engaged in public service business, and the taxes derived from direct levies thereon constitute an important source of revenue to the State and its subdivisions of government; and

WHEREAS, The nature and value of said properties to be assessed each year not only require study throughout the year but involve skill, knowledge and experience in the fields of accounting, engineering and appraisal methods, and it is common knowledge that the members of the Board of Public Works, on account of the heavy responsibilities of their respective departments, are in a position to give only a small part of their time to the discharge of the duties imposed upon them by chapter eleven, article six of the Code of West Virginia; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That the Joint Committee on Government and Finance be authorized and directed to include in its survey and studies an investigation and study concerning the advisability of the establishment of a state agency for the valuation and assessment of the properties of public service corporations in West Virginia, in the place and stead of the Board of Public Works of West Virginia as provided in chapter eleven, section six of the Code.

That prior to the convening of the next regular session of the Legislature, the Joint Committee make and issue a report to the Governor and to the Legislature concerning its study, together with such recommendations and proposed legislation as in its opinion will best serve the interests of all the people of the State.

HOUSE CONCURRENT RESOLUTION NO. 19

(By Messrs. Craig, Frazer, Parker and Crynock)

[Adopted February 6, 1958.]

Requesting the U. S. Bureau of Public Roads to allocate additional mileage to the State of West Virginia under the Federal Highway Act of 1956 and to include U. S. Route 19 in the interstate system.

WHEREAS, The State of West Virginia is desperately lacking in transportation facilities North and South, including both rail and highway; and

WHEREAS, U. S. Route 19 offers an ideal route for a North-South highway through this State, providing a fitting link in a highway leading from the Great Lakes to Florida; and

WHEREAS, Such a highway through the State from Morgantown to Bluefield would start only 15 miles from the Pennsylvania Turnpike on the North and connect with improved highways to the South, portions of which are now being improved in the States of North Carolina, Georgia and Florida; and

WHEREAS, Such a route would accommodate a huge amount of traffic and transportation from East, West, North and South; and

WHEREAS, Route 19 through West Virginia serves many state institutions, including West Virginia University and its new Medical Center, Fairmont College and Weston State Hospital; and traverses an area rich in scenic and historical values, including the boyhood home of General Stonewall Jackson; and

WHEREAS, West Virginia is one of the most vital states in our National Defense due to its production of metallurgical coals and chemicals; and

WHEREAS, West Virginia is strategically located as a refuge for citizens of a large segment of the United States population in case of attack by foreign enemies, providing adequate transportation is available; therefore, be it

Resolved by the House of Delegates, the Senate concurring therein:

That we, the members of the Legislature of West Virginia, representing the two million citizens of this State, do hereby respectfully request the U. S. Bureau of Public Roads to allocate additional highway mileage for improvement or reconstruction of U. S. Route 19 through the State of West Virginia under the Federal Highway Act of 1956, thereby providing a vital link in a direct route from the Great Lakes to Florida and strengthening the National Defense System of the Nation; and, be it

Further Resolved, That the Clerk of the House of Delegates transmit a copy of this resolution to the United States Bureau of Public Roads, the members of the Congress from the State of West Virginia, the Governor and the State Road Commissioner of West Virginia.

SENATE CONCURRENT RESOLUTION NO. 9

(By Mr. Ballard)

[Adopted February 4, 1958.]

Providing for a request to the Board of Public Works concerning the salary and job classification schedules of the State Road Commission.

WHEREAS, The investigations conducted by both Houses of the Legislature, at this session, have disclosed a public need for the revision of the job and salary classification schedules of the State Road Commission; therefore, be it

Resolved by the Senate, the House of Delegates concurring therein:

That the Board of Public Works be, and it is hereby, requested to revise and amend the present salary and job classification schedules of the State Road Commission, in order that the salaries of qualified engineering personnel thereof, presently employed, may be increased, and in order also, that additional qualified engineering personnel may be attracted to, and employed by, the State Road Commission, and the planning, engineering, and development departments thereof thus enabled to operate more efficiently now and in the future.

LEGISLATURE OF WEST VIRGINIA

ACTS OF 1956

FIRST EXTRAORDINARY SESSION (August 9, 1956)

CHAPTER 1

(House Bill No. 1—By Mr. Speaker, Mr. Flannery)

AN ACT to appropriate money out of the treasury for the purpose of purchasing equipment and supplies for the college of engineering of West Virginia university.

[Passed August 9, 1956; in effect from passage. Approved by the Governor.]

Section.

1. Supplemental appropriation for the college of engineering of West Virginia university.

WHEREAS, Most of the equipment and supplies of the college of engineering of West Virginia university were recently destroyed by fire; therefore

Be it enacted by the Legislature of West Virginia:

- Section 1. *Supplemental Appropriation for the College of Engineering of West Virginia University.*—It appearing from the most recent statement of revenue estimates for the current fiscal year, prepared and submitted to the Legislature by the board of public works, and from the definitely appropriated items contained in the budget bill

7 for the current year, that there will be sufficient money
8 in the state fund general revenue with which to meet the
9 appropriation herein made, there is hereby appropriated
10 to West Virginia university from the general revenue
11 fund the additional sum of three hundred ten thousand
12 dollars, to be available for expenditure during this fiscal
13 year, for the purpose of purchasing equipment and sup-
14 plies for the college of engineering of West Virginia uni-
15 versity.

CHAPTER 2

(House Bill No. 2—By Mr. Speaker, Mr. Flannery)

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, numbered and designated thirty-seven-a, consisting of sections one through six, article one, enacting zoning restrictions governing the use of electrical equipment and the emanation of electrical impulses therefrom within a ten-mile radius of any radio astronomy facility in the state of West Virginia.

[Passed August 9, 1956; in effect from passage. Approved by the Governor.]

CHAPTER 37-A. ZONING

Article 1. Radio Astronomy Zoning Act.

Section

1. Short title.
2. Restrictions within two miles of facility.
3. Restrictions within ten miles of facility.
4. Exemption for existing equipment.
5. Penal provisions.
6. Injunctive relief.

WHEREAS, The National Science Foundation has selected, subject to zoning and other arrangements, Green Bank, Pocahontas county, West Virginia, as the site for the installation

and operation of a major radio astronomy facility in the state of West Virginia; and

WHEREAS, To avoid interference caused by emanations of electrical impulses from electrical equipment functioning in the area surrounding the proposed site, it is necessary that such area be zoned to avoid interfering electrical emanations; and

WHEREAS, It is in the public interest to encourage the economic improvement and development of all areas in this state and to promote educational and scientific research within this state; and

WHEREAS, The establishment of said radio astronomy facility in an undeveloped area in this state will encourage and contribute to the economic improvement and development of such area and will promote educational and scientific research within this state; and

WHEREAS, The establishment and operation of said radio astronomy facility within the state of West Virginia will lend great prestige to this state and stimulate tourist trade to said area; and

WHEREAS, The establishment and operation of said radio astronomy facility within the state of West Virginia is contingent upon the area within ten miles of the site thereof being substantially free of emanations from unshielded electrical equipment of such field strength as to interfere with the efficient and proper functioning of said radio astronomy facility; and

WHEREAS, The restrictions necessary to insure freedom from such emanations in such area are reasonable and proper and the benefits to be derived therefrom are substantial; therefore

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, numbered and designated thirty-seven-a, consisting of sections one through six, article one, to read as follows:

Section 1. *Short Title.*—This article shall be known as
2 the “Radio Astronomy Zoning Act.”

2 Sec. 2. *Restrictions Within Two Miles of Facility.*—It
3 shall be illegal to operate or cause to be operated any
4 electrical equipment within a two-mile radius of the re-
5 ception equipment of any radio astronomy facility if such
6 operation causes interference with reception by said radio
7 astronomy facility of radio waves emanating from any
8 nonterrestrial source.

2 Sec. 3. *Restrictions Within Ten Miles of Facility.*—It
3 shall be unlawful to operate or cause to be operated any
4 electrical equipment within a radius of ten miles of the
5 reception equipment of any radio astronomy facility, if
6 the instantaneous peak field strength of the emanation
7 from such electrical equipment is in excess of:

8 Ten microvolts per meter measured at a distance of
9 ten feet from such electrical equipment, if such electrical
10 equipment is located less than three miles from said re-
11 ception equipment; ten microvolts per meter measured
12 at a distance of fifteen feet from such electrical equip-
13 ment, if such electrical equipment is located less than four
14 miles from said reception equipment; ten microvolts per
15 meter measured at a distance of twenty feet from such
16 electrical equipment, if such electrical equipment is
17 located less than five miles from said reception equip-
18 ment; five microvolts per meter measured at a distance
19 of fifty feet from such electrical equipment, if such elec-
20 trical equipment is located less than six miles from said
21 reception equipment; six microvolts per meter measured
22 at a distance of fifty feet from such electrical equipment,
23 if such electrical equipment is located less than seven
24 miles from said reception equipment; seven microvolts
25 per meter measured at a distance of fifty feet from such
26 electrical equipment, if such electrical equipment is
27 located less than eight miles from said reception equip-
28 ment; eight microvolts per meter measured at a distance
29 of fifty feet from such electrical equipment, if such elec-
30 trical equipment is located less than nine miles from such
31 reception equipment; nine microvolts per meter measured
32 at a distance of fifty feet from such electrical equipment,
33 if such electrical equipment is located less than ten miles
34 from said reception equipment: *Provided, however, That*

34 notwithstanding the provisions of this section, it shall not
35 be unlawful to operate or cause to be operated any elec-
36 trical equipment so constructed or shielded as not to cause
37 interference with the reception by such radio astronomy
38 facility of radio waves emanating from a nonterrestrial
39 source.

2 Sec. 4. *Exemption for Existing Equipment.*—Nothing in
3 this article shall be construed to render unlawful the
4 continued operation of electrical equipment within a ten-
5 mile radius of a radio astronomy site if such equipment
6 existed within such distance of such site previous to the
7 commencement of operation of such radio astronomy
8 facility, or if such equipment is intended as a replacement
9 for such existing equipment.

2 Sec. 5. *Penal Provisions.*—Any person knowingly oper-
3 ating or causing to be operated electrical equipment in
4 violation of the provisions of this article shall be subject
5 to a fine of fifty dollars plus an additional fine of fifty dol-
6 lars for each day such electrical equipment is knowingly
7 operated after receipt by such person of written notice
8 from the prosecuting attorney of the county in which the
9 radio astronomy facility is situated that such operation is
in violation of the provisions of this article.

2 Sec. 6. *Injunctive Relief.*—The operation of any electri-
3 cal equipment in violation of this article shall be enjoined
4 by the circuit court of the county in which such electrical
5 equipment is located upon petition filed by the prosecut-
6 ing attorney of such county or by the attorney general
7 of this state irrespective of any other legal remedy
available.



DISPOSITION OF BILLS ENACTED Regular Session, 1957

The first column gives the number of the bill and the second column the chapter assigned to it. House Bills appear first, followed by Senate Bills.

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